Western Australia

Rail Freight System (Acquisition and Reorganisation) Act 2026

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Defined terms

Western Australia

Rail Freight System (Acquisition and Reorganisation) Act 2026

An Act —

- **to make provision in relation to the rail freight system in the State; and**
- **to amend the *Rail Freight System Act 2000*; and**
- **for related purposes.**

Part 1 — Preliminary

1. Short title

This is the *Rail Freight System (Acquisition and Reorganisation) Act 2026*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Terms used

(1) In this Act —

acquired below rail freight business means a below rail freight business that is the subject of an authorised acquisition;

amending order — see section 16(1);

arrangement includes an agreement, an instrument, a transaction and a scheme;

asset —

(a) means property of any kind, whether tangible, intangible, real or personal; and

(b) includes any chose in action, goodwill, right, interest or claim of any kind —

(i) whether arising from, accruing under, created or evidenced by or the subject of an instrument or otherwise; and

(ii) whether liquidated or unliquidated; and

(iii) whether actual, contingent or prospective;

and

(c) includes a contractual right —

(i) that is regarded as arising because of section 20(2); or

(ii) that arises (directly or indirectly) from a contractual right or liability that is regarded as arising because of section 20(2);

and

(d) includes a contractual right —

(i) that is regarded as arising because of the *Rail Freight System Act 2000* section 26(2); or

(ii) that arises (directly or indirectly) from a contractual right or liability that is regarded as arising because of the *Rail Freight System Act 2000* section 26(2);

authorised acquisition means an acquisition authorised by an order under section 6(1);

authorised reorganisation means a reorganisation authorised by an order under section 9(1);

Authority means the Public Transport Authority of Western Australia established by the *Public Transport Authority Act 2003* section 5;

Authority business concern means a business concern that is either or both of the following —

(a) a business concern —

(i) in which the Authority participates under the *Public Transport Authority Act 2003* section 13(2)(d); or

(ii) in which the Authority holds securities under the *Public Transport Authority Act 2003* section 13(2)(d);

(b) a business concern —

(i) in which an Authority business concern under paragraph (a) or this paragraph participates; or

(ii) in which an Authority business concern under paragraph (a) or this paragraph holds securities;

Authority staff member means any of the following —

(a) the chief executive officer of the Authority;

(b) a member of the staff of the Authority;

(c) a person whose services are made use of by the Authority under the *Public Transport Authority Act 2003* section 11(1);

below rail freight business —

(a) means a business, whether carried on for profit or otherwise, that involves 1 or more of the following (whether or not the business also involves other activities) —

(i) the providing or maintaining of infrastructure, facilities or other assets for the operation of railways for the carriage of freight;

(ii) the conducting of operations, the providing of services or the conducting of other activities that are related to an activity covered by subparagraph (i);

(iii) the receiving of income or revenue (however described) that is derived (directly or indirectly) from an activity covered by subparagraph (i) or (ii);

and

(b) includes a part of a business described in paragraph (a);

Note for this definition:

See also subsection (2).

business concern means a company, a partnership, a trust, a joint venture or any other business arrangement;

business day means a day other than a Saturday, a Sunday or a public holiday throughout the State;

constitution, in relation to a business concern, means the instrument (however called) that establishes or governs the business concern;

correction order — see section 17(1);

corridor land has the meaning given in the *Rail Freight System Act 2000* section 3;

director, in relation to a business concern, includes a member of the governing body of the business concern;

entity means any of the following —

(a) the State;

(b) a State entity;

(c) a business concern, or other person or body, not covered by paragraph (a) or (b);

Government agreement means an agreement referred to in paragraph (a) of the definition of ***Government agreement*** in the *Government Agreements Act 1979* section 2 and, if the agreement has been varied, means the agreement as varied;

interest in land —

(a) means a lease, licence or other right or interest in respect of —

(i) land; or

(ii) anything in, on or over land; or

(iii) anything buried in land;

and

(b) includes the terms on which the lease, licence or other right or interest is granted or to which it is otherwise subject;

liability —

(a) means any liability, duty or obligation —

(i) whether liquidated or unliquidated; and

(ii) whether actual, contingent or prospective; and

(iii) whether owed alone or owed jointly, or jointly and severally, with any other entity;

and

(b) includes a contractual liability —

(i) that is regarded as arising because of section 20(2); or

(ii) that arises (directly or indirectly) from a contractual right or liability that is regarded as arising because of section 20(2);

and

(c) includes a contractual liability —

(i) that is regarded as arising because of the *Rail Freight System Act 2000* section 26(2); or

(ii) that arises (directly or indirectly) from a contractual right or liability that is regarded as arising because of the *Rail Freight System Act 2000* section 26(2);

non-State entity means an entity covered by paragraph (c) of the definition of ***entity*** in this subsection;

participate in, in relation to a business concern, includes form, promote, establish, enter into, manage, dissolve, wind up, and do things incidental to participating in the business concern;

party, in relation to a transfer order, means an entity specified in the transfer order under a paragraph of section 15(1);

publication day, in relation to an order or regulations made under this Act, means the day on which the order or regulations are published in the *Gazette* or on the WA legislation website;

purposes, of an authorised acquisition or authorised reorganisation, has a meaning affected by subsection (3);

record includes a register, minute, receipt, book of account or other document (however compiled, recorded or stored);

registration official means any of the following —

(a) the Registrar of Titles under the *Transfer of Land Act 1893*;

(b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*;

(c) the Minister administering the *Land Administration Act 1997*;

(d) another entity authorised or required by a written law to record and give effect to the registration of instruments or other documents relating to transactions affecting any estate or interest in land or any other property;

relevant record, in relation to a transfer order, means a record relating to any asset, liability, arrangement or proceedings specified in the transfer order under a paragraph of section 15(1);

reorganisation — see section 9(2);

right —

(a) means any right, power, privilege or immunity, whether actual, contingent or prospective; but

(b) in relation to a transfer order, does not include any privilege or immunity enjoyed as an agent of the Crown except in so far as it relates to anything done or omitted to be done before the transfer time under the transfer order;

securities, as in securities in an entity, includes shares, units or other interests in, or in relation to, the entity;

specified includes described;

State entity means any of the following —

(a) a Minister;

(b) the Authority;

(c) an Authority staff member;

(d) an Authority business concern;

(e) a director, officer or employee of an Authority business concern;

(f) a body, or the holder of an office, post or position, that is established or continued for a public purpose under a written law;

(g) a member, member of the governing body, officer or employee of —

(i) a body covered by paragraph (f); or

(ii) the holder of an office, post or position covered by paragraph (f);

(h) a public service officer or any other officer or employee of the State;

State tax includes the following —

(a) duty chargeable under the *Duties Act 2008*;

(b) any other tax, duty, fee, levy or charge under a law of the State;

transfer order — see section 15(1);

transfer time, in relation to a transfer order, means the time specified in the transfer order under section 15(1)(a).

(2) In the definition of ***below rail freight business*** in subsection (1), references to a business include 2 or more businesses taken together —

(a) whether each business is carried on —

(i) by the same entity; or

(ii) by a different entity; or

(iii) otherwise;

and

(b) whether or not all of the businesses involve an activity covered by paragraph (a)(i) to (iii) of the definition.

(3) In this Act, references to the ***purposes*** of an authorised acquisition or authorised reorganisation include the following —

(a) the purpose of effecting, or preparing for or facilitating, the authorised acquisition or authorised reorganisation;

(b) any purpose that is ancillary or incidental to, or consequential on, the authorised acquisition or authorised reorganisation.

4. Background and purpose

(1) The *Rail Freight System Act 2000*, amongst other things, conferred the following powers to enable the State to dispose of the State's rail freight business as it was in 2000 —

(a) the power to dispose of the Commission's rail freight business (as that term was defined in the *Rail Freight System Act 2000* section 3 on the enactment of that Act);

(b) the power to designate government railway land (as that term was defined in the *Rail Freight System Act 2000* section 31 on the enactment of that Act) as corridor land;

(c) powers in relation to corridor land and things on corridor land.

(2) As a result of the exercise of the powers referred to in subsection (1), what was the State's rail freight business is, as at the enactment of this Act, carried on by non-State entities.

(3) The purpose of this Act is, in general terms, to enable the below rail part of the State's rail freight business —

(a) to be returned to the State (see, in particular, Part 2 Division 1); and

(b) once returned, to be disposed of again or otherwise reorganised (see, in particular, Part 2 Division 2).

5. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2 — Return and reorganisation of State's below rail freight business

Division 1 — Return of State's below rail freight business

6. Minister may authorise Authority to acquire below rail freight business

(1) The Minister may, by order —

(a) authorise the Authority to acquire, on behalf of the State, a below rail freight business specified in the order; or

(b) amend or revoke an order made under paragraph (a) or this paragraph.

(2) An order under subsection (1) —

(a) may be in general terms; and

(b) may specify the below rail freight business —

(i) by reference to an entity that carries on the below rail freight business; or

(ii) in any other way;

and

(c) need not include any details of how the acquisition is to be effected.

7. Effecting authorised acquisition

(1) There are no limitations on the type of arrangements that can be made for the purposes of an authorised acquisition.

(2) Without limitation, the Authority may acquire the below rail freight business —

(a) directly; or

(b) indirectly through 1 or more Authority business concerns; or

(c) partly directly and partly indirectly through 1 or more Authority business concerns.

(3) Without limitation, the authorised acquisition may be effected by 1 or more of the following —

(a) the transfer to the Authority, or to an Authority business concern, of securities in a relevant entity;

(b) the transfer to the Authority, or to an Authority business concern, of assets and liabilities of a relevant entity;

(c) the grant to the Authority, or to an Authority business concern, of leases, licences or other rights or interests in respect of assets of a relevant entity.

(4) For the purposes of subsection (3), a ***relevant entity*** is an entity that —

(a) carries on, or takes part in the carrying on of, the below rail freight business; or

(b) holds securities in an entity that is a relevant entity under paragraph (a) or this paragraph.

8. Effect on existing rights and obligations: change of control or transfer of asset or liability

(1) Subsection (2) applies if, for the purposes of an authorised acquisition —

(a) there is a change in the entity or entities —

(i) that hold securities in a business concern; or

(ii) that have voting power in relation to a business concern; or

(iii) that, under the constitution of a business concern or an arrangement relating to a business concern, have powers in relation to the conduct of the affairs of the business concern; or

(iv) that control the composition of the board of directors or other governing body of a business concern; or

(v) that otherwise control the conduct of the affairs of a business concern;

or

(b) there is a transfer of an asset or liability (whether by way of a transfer order or otherwise).

(2) The change or transfer, or an act or omission that is related to the change or transfer —

(a) is not a civil wrong; and

(b) is not a breach of an existing arrangement; and

(c) does not require any act to be done under an existing arrangement; and

(d) does not give rise to a right or remedy of a party to an existing arrangement or cause or permit the termination of, or the exercise of rights under, an existing arrangement; and

(e) is not an event of default under an existing arrangement; and

(f) does not cause an existing arrangement to be void or otherwise unenforceable; and

(g) except as provided in section 36(3) and (4), does not release, or allow the release of, a surety or other obligee under an existing arrangement from the whole or part of an obligation.

(3) For the purposes of subsection (2) —

(a) an act or omission is ***related*** to the change or transfer if the act or omission —

(i) results in the change or transfer; or

(ii) is ancillary or incidental to, or consequential on, the change or transfer;

and

(b) an ***existing arrangement*** is an arrangement that —

(i) exists before the change or transfer occurs; and

(ii) was not made for the purposes of the authorised acquisition.

(4) Subsection (2) does not apply to a disclosure of information.

(5) The *Corporations Act 2001* (Cth) section 47 applies, with any necessary modifications, for the purposes of subsection (1)(a)(iv).

(6) In this section, references to a change or transfer include the following —

(a) a prospective change or transfer;

(b) a proposal for a change or transfer.

Division 2 — Reorganisation of State's below rail freight business

9. Minister may authorise reorganisation of acquired below rail freight business

(1) The Minister may, by order —

(a) authorise the reorganisation of —

(i) an acquired below rail freight business specified in the order; or

(ii) a part, specified in the order, of an acquired below rail freight business;

or

(b) amend or revoke an order made under paragraph (a) or this paragraph.

(2) A ***reorganisation*** is either or both of the following —

(a) the disposal to 1 or more non-State entities of the acquired below rail freight business or part;

(b) the making of arrangements under which 1 or more non-State entities are to do 1 or more of the following, directly or indirectly —

(i) carry on, or take part in the carrying on of, the acquired below rail freight business or part;

(ii) invest in the acquired below rail freight business or part;

(iii) otherwise be involved in the acquired below rail freight business or part.

(3) An order under subsection (1) —

(a) may be in general terms; and

(b) may specify the acquired below rail freight business or part —

(i) by reference to the Authority, or to an Authority business concern, as the entity that carries on the acquired below rail freight business or part under section 28(1); or

(ii) in any other way;

and

(c) need not include any details of the 1 or more non-State entities referred to in subsection (2)(a) or (b) or of how the reorganisation is to be effected.

10. Effecting authorised reorganisation

(1) There are no limitations on the type of arrangements that can be made for the purposes of an authorised reorganisation.

(2) Without limitation, the authorised reorganisation may be effected by 1 or more of the following —

(a) the transfer to an entity of securities in a relevant Authority business concern;

(b) the transfer to an entity of assets and liabilities of —

(i) the Authority; or

(ii) a relevant Authority business concern;

(c) the grant to an entity of leases, licences or other rights or interests in respect of assets of —

(i) the Authority; or

(ii) a relevant Authority business concern.

(3) For the purposes of subsection (2), a ***relevant Authority business concern*** is an Authority business concern that —

(a) carries on, or takes part in the carrying on of, the acquired below rail freight business or part under section 28(1); or

(b) holds securities in an Authority business concern that is a relevant Authority business concern under paragraph (a) or this paragraph.

(4) Without limitation, arrangements made for the purposes of the authorised reorganisation may provide for either or both of the following —

(a) varying, terminating or granting an interest in land;

(b) varying, terminating or replacing an agreement entered into under the *Rail Freight System Act 2000* section 13.

(5) Without limitation, arrangements made for the purposes of the authorised reorganisation may provide for the Authority to do 1 or more of the following, directly or indirectly, after the authorised reorganisation —

(a) carry on, or take part in the carrying on of, the acquired below rail freight business or part;

(b) invest in the acquired below rail freight business or part;

(c) otherwise be involved in the acquired below rail freight business or part.

Note for this subsection:

See also section 28(5) and (6).

(6) Without limitation, arrangements made for the purposes of the authorised reorganisation may make provision for, or in relation to, 1 or more of the following —

(a) the continuation, and nature and extent, after the authorised reorganisation, of the acquired below rail freight business or part;

(b) the providing or maintaining, after the authorised reorganisation, of infrastructure, facilities or other assets for the operation of railways for the carriage of freight;

(c) the conducting of operations, the providing of services or the conducting of other activities that are related to an activity covered by paragraph (b);

(d) the financing, after the authorised reorganisation, of the acquired below rail freight business or part;

(e) the variation, ending or replacing of the arrangements, after the authorised reorganisation, including the returning to the State of the acquired below rail freight business or part.

(7) Without limitation, arrangements made for the purposes of the authorised reorganisation may provide —

(a) for a party to the arrangements to be liable to pay an amount determined under the arrangements, by way of civil penalty, in respect of a breach of the arrangements; and

(b) for an increase in the amount of the civil penalty because of each day or part of a day during which a breach continues.

(8) A civil penalty provided for under subsection (7) is recoverable even if no damage is suffered or the penalty is unrelated to the extent of any damage suffered.

11. Interaction with *Rail Freight System Act 2000* s. 42(1)(a)

(1) Despite the 50-year restriction in the *Rail Freight System Act 2000* section 42(1)(a) —

(a) an interest in land granted under the *Rail Freight System Act 2000* section 42(1)(a) may, for the purposes of an authorised reorganisation, be varied so as to extend the term of the interest, or the term the interest is capable of having, beyond 50 years, so long as that term, with its extension, ends no later than 99 years after the day on which the variation takes effect; and

(b) an interest in land may, for the purposes of an authorised reorganisation, be granted under the *Rail Freight System Act 2000* section 42(1)(a) for a term that is, or is capable of being, more than 50 years but no more than 99 years.

(2) The *Rail Freight System Act 2000* section 42(2) applies for the purposes of subsection (1) as it applies for the purposes of section 42(1)(a) of that Act.

12. Interaction with *Land Administration Act 1997* s. 18 and *Planning and Development Act 2005* s. 136 and 147

(1) Approval under the *Land Administration Act 1997* section 18 is not required for anything that is contained in, or done to give effect to, an arrangement made for the purposes of an authorised reorganisation unless that approval is required because of section 178(5) of that Act.

(2) The *Planning and Development Act 2005* sections 136 and 147 do not apply in relation to anything that —

(a) is done as described in section 10(4); or

(b) is otherwise done for the purposes of an authorised reorganisation.

13. Proceeds of authorised reorganisation

Any proceeds of an authorised reorganisation must be paid to the Authority and, accordingly, credited to the Public Transport Authority Account established under the *Public Transport Authority Act 2003* section 32.

14. Effect on existing rights and obligations

(1) Subsection (2) applies to the following (each a ***protected event***) —

(a) the operation of this Act in relation to an authorised reorganisation;

(b) an authorised reorganisation;

(c) an act or omission done or made, or anything that occurs, for the purposes of an authorised reorganisation.

(2) A protected event —

(a) is not a civil wrong; and

(b) is not a breach of an existing arrangement; and

(c) does not require any act to be done under an existing arrangement; and

(d) does not give rise to a right or remedy of a party to an existing arrangement or cause or permit the termination of, or the exercise of rights under, an existing arrangement; and

(e) is not an event of default under an existing arrangement; and

(f) does not cause an existing arrangement to be void or otherwise unenforceable; and

(g) except as provided in section 36(3) and (4), does not release, or allow the release of, a surety or other obligee under an existing arrangement from the whole or part of an obligation.

(3) For the purposes of subsection (2), an ***existing arrangement*** is an arrangement that —

(a) exists before the protected event occurs; and

(b) was not made for the purposes of the authorised reorganisation.

(4) Subsection (2) does not apply to a disclosure of information.

Division 3 — Transfer orders

15. Minister may make transfer order

(1) For the purposes of an authorised acquisition or authorised reorganisation, the Minister may, by order (a ***transfer order***), do any of the following —

(a) specify a time (which must be after the publication day for the transfer order) that is the transfer time under the transfer order;

(b) provide that a specified asset or liability is, at the transfer time, transferred from a specified entity to another specified entity;

(c) provide that a specified entity is, at the transfer time, substituted for another specified entity in specified proceedings;

(d) provide that a specified arrangement has effect, at and after the transfer time, as if (unless otherwise specified) references to a specified entity were substituted for references to another specified entity;

(e) provide that any proceedings or remedy that, before the transfer time, might have been commenced by, or been available against or to, a specified entity in relation to a specified asset or liability may be commenced by, or are available against or to, another specified entity at and after the transfer time;

(f) provide that anything relating to a specified asset or liability that was done or omitted to be done by, to or in relation to a specified entity before the transfer time is taken, at and after the transfer time, to have been done or omitted to be done by, to or in relation to another specified entity.

(2) In subsection (1)(b) to (f) —

specified means specified (as defined in section 3(1)) in the transfer order.

Note for this definition:

See also section 18.

(3) At the transfer time under a transfer order, the transfer order has effect —

(a) according to its contents; and

(b) without the need for any conveyances, transfers, assignments or assurances or any prior notices or further acts.

(4) If the transfer time is specified under subsection (1)(a) by reference to when a thing is done, the Minister must ensure that notice of the time when the thing is done is published in the *Gazette*.

(5) The Minister can make a transfer order only if each non-State entity that is a party to the transfer order has agreed to the contents of the transfer order.

16. Amendment of transfer order

(1) The Minister may, by order (an ***amending order***), amend a transfer order or a schedule for a transfer order, but only before the transfer time under the transfer order.

Note for this subsection:

See section 18 in relation to schedules for a transfer order.

(2) The Minister can make an amending order only if each non-State entity that is a party to the transfer order concerned, or that would become a party as a result of the amending order, has agreed to the contents of the amending order.

17. Correction of error in transfer order

(1) The Minister may, by order (a ***correction order***), make any provision that is necessary to correct an error in a transfer order or a schedule for a transfer order.

Note for this subsection:

See section 18 in relation to schedules for a transfer order.

(2) A correction order may be expressed to come into operation at the transfer time under the transfer order concerned, even if the transfer time fell before the publication day for the correction order.

(3) If a correction order comes into operation before its publication day, the transfer order concerned does not, as a result of the correction order, operate so as —

(a) to affect in a manner prejudicial to any non-State entity the rights of that entity existing before the publication day; or

(b) to impose liabilities on any non-State entity in respect of anything done or omitted to be done before the publication day.

(4) The Minister can make a correction order correcting a transfer order, or a schedule for a transfer order, only if each non-State entity that is a party to the transfer order, or that would become a party as a result of the correction order, has agreed to the contents of the correction order.

18. Specifying entities and things in transfer order

(1) Different entities or things may be specified in a transfer order under different paragraphs of section 15(1).

(2) An entity or thing may be specified in a transfer order by describing the entity or thing as a member of a class.

(3) A transfer order may specify entities or things by reference to schedules that —

(a) need not be published in the *Gazette*; but

(b) must be available for public inspection on business days at the place, and between the times, specified in the transfer order for 6 months after its publication day.

(4) An entity or thing specified in a schedule for a transfer order is taken to be specified in the transfer order.

(5) Before a transfer order is made specifying entities or things by reference to a schedule, the Minister must consult each registration official to whom a copy of the schedule must be given under section 22(1) about the form and content of the schedule for the purpose of facilitating the recording and registration of instruments or other documents as required by section 22(2)(b).

(6) This section does not limit or otherwise affect the definition of ***specified*** in section 3(1).

19. Completion of transactions

If a transfer order cannot, by operation of this Division, have to any extent the effect sought to be achieved (whether because a matter is governed otherwise than by a law of the State or for any other reason), the Minister and each party to the transfer order must each take all practicable steps to achieve that effect as soon as possible after the transfer time.

20. Effect of party's internal arrangements

(1) An arrangement between different parts of the business of a party to a transfer order may be specified in the transfer order as if the arrangement created contractual rights and liabilities.

(2) An arrangement specified as described in subsection (1) is to be regarded as if its provisions were contractual provisions between different legal persons.

(3) The following are, without limitation, transferable under this Division —

(a) a contractual right covered by paragraph (c) or (d) of the definition of ***asset*** in section 3(1);

(b) a contractual liability covered by paragraph (b) or (c) of the definition of ***liability*** in section 3(1).

21. Delivery and access to records

(1) This section applies in relation to a transfer order made for the purposes of an authorised reorganisation.

(2) The Minister may give a State entity that is a party to the transfer order a direction (whether in the transfer order or otherwise) as to which relevant records, or classes of relevant records, in the possession or control of the State entity must be delivered to or shared with, or be able to be accessed by, another party to the transfer order.

(3) The State entity must deliver to or share with the other party, or enable the other party to have access to, relevant records in accordance with the direction.

(4) The State entity and the other party must make arrangements for the delivery or sharing of, or access to, relevant records in accordance with the direction.

22. Registration of documents

(1) The Minister must ensure that a copy of each of the following instruments is given to each relevant registration official —

(a) a transfer order and any schedule for it;

(b) a notice published under section 15(4) in respect of the transfer time under a transfer order;

(c) an amending order;

(d) a correction order.

(2) A relevant registration official must —

(a) take notice of this Division, a transfer order and any other instrument relating to a transfer order that is referred to in subsection (1); and

(b) record and register in the appropriate manner the instruments or other documents necessary to show the effect of this Division and a transfer order.

Division 4 — Disclosure of information

23. Authorised disclosure of information

(1) A disclosure of information that is authorised by this section is not —

(a) a breach of contract or confidence or any other civil wrong; or

(b) a breach of duty under a written law; or

(c) a breach of, or an offence under, a provision of a written law that prohibits or restricts the disclosure of information.

(2) A disclosure of information is authorised by this section if it is made for the purposes of an authorised acquisition or authorised reorganisation —

(a) by the State or a State entity; or

(b) by a non-State entity acting with the authority of the State or a State entity; or

(c) by a non-State entity to the State or a State entity.

(3) For the purposes of subsection (2), a disclosure of information made for the purposes of an authorised acquisition or authorised reorganisation includes a disclosure of information for the purposes of a potential authorised acquisition or potential authorised reorganisation before an order under section 6(1) or 9(1) is made authorising the acquisition or reorganisation.

24. Auditor General may disclose information

Despite the *Auditor General Act 2006* section 46(2) and without limiting section 23, the Auditor General may, for the purposes of an authorised reorganisation, disclose to any entity, or provide any entity with access to, information in the possession or under the control of the Auditor General.

25. Offence of disclosing information

(1) Subsection (2) applies to a non-State entity (the ***bound recipient***) that —

(a) obtains information connected with an authorised acquisition or authorised reorganisation, whether through a disclosure authorised by section 23 or otherwise; and

(b) has agreed, or is otherwise under a duty, not to disclose the information to others.

(2) The bound recipient commits an offence if the bound recipient breaches the agreement or duty referred to in subsection (1)(b).

Penalty for this subsection: a fine of $200 000.

(3) A non-State entity that obtains information connected with an authorised acquisition or authorised reorganisation from or through the bound recipient commits an offence if the non-State entity discloses the information in a way that would have

resulted in a breach of the agreement or duty referred to in subsection (1)(b) if the disclosure had been made by the bound recipient.

Penalty for this subsection: a fine of $200 000.

(4) A non-State entity is exempt from subsection (3) if the non-State entity has a lawful excuse for disclosing the information.

(5) For the purposes of subsections (1)(a) and (3), information connected with an authorised acquisition or authorised reorganisation includes information obtained in connection with a potential authorised acquisition or potential authorised reorganisation before an order under section 6(1) or 9(1) is made authorising the acquisition or reorganisation.

(6) This section is subject to section 23(1).

Part 3 — Functions and related matters

26. Minister

(1) The Minister may make, on behalf of the State, any arrangement —

(a) for the purposes of an authorised acquisition or authorised reorganisation; or

(b) otherwise for the purposes of this Act.

(2) The Minister has all the other functions on behalf of the State that are necessary or convenient —

(a) for the purposes of an authorised acquisition or authorised reorganisation; or

(b) otherwise for the purposes of this Act.

27. Authority: effecting authorised acquisition or authorised reorganisation

The Authority has the function of —

(a) effecting any authorised acquisition or authorised reorganisation; and

(b) otherwise doing anything necessary or convenient for the purposes of an authorised acquisition or authorised reorganisation.

28. Authority: carrying on acquired below rail freight business

(1) If an authorised acquisition is effected, the Authority has the function of carrying on the acquired below rail freight business.

(2) The Authority may carry on the acquired below rail freight business —

(a) directly; or

(b) indirectly through 1 or more Authority business concerns; or

(c) partly directly and partly indirectly through 1 or more Authority business concerns.

(3) If the acquired below rail freight business, or a part of it, is affected by the cancellation of the designation of any land as corridor land by an order under the *Rail Freight System Act 2000* section 37, the Authority's function under subsection (1), as the case requires —

(a) ceases in relation to the acquired below rail freight business when the designation is cancelled; or

(b) ceases in relation to the part when the designation is cancelled.

(4) If the acquired below rail freight business, or a part of it, becomes the subject of an authorised reorganisation, the Authority's function under subsection (1), as the case requires —

(a) ceases in relation to the acquired below rail freight business when the authorised reorganisation is effected; or

(b) ceases in relation to the part when the authorised reorganisation is effected.

(5) If the arrangements made for the purposes of the authorised reorganisation provide for the Authority to do 1 or more things as described in section 10(5), the Authority has the function of doing those 1 or more things.

(6) Subject to the arrangements, the Authority may do those 1 or more things —

(a) directly; or

(b) indirectly through 1 or more Authority business concerns; or

(c) partly directly and partly indirectly through 1 or more Authority business concerns.

29. Authority: interaction with *Public Transport Authority Act 2003*

(1) The Authority's power to delegate, under the *Public Transport Authority Act 2003* section 19(1), a power or duty under this Act applies only to the following —

(a) section 28(1);

(b) any regulations made under section 45 that relate to the Authority's function under section 28(1).

(2) The *Public Transport Authority Act 2003* section 21(1) does not require an operational plan to include any content relating to an Authority business concern, or to activities conducted by an Authority business concern, through which the Authority does anything under section 7(2)(b) or (c) or 28(2)(b) or (c) or (6)(b) or (c).

(3) In the *Public Transport Authority Act 2003* section 29(1)(b), the reference to the Authority includes an Authority business concern through which the Authority does anything under section 7(2)(b) or (c) or 28(2)(b) or (c) or (6)(b) or (c).

30. Authority: interaction with *Infrastructure Western Australia Act 2019*

(1) The *Infrastructure Western Australia Act 2019* Part 3 does not apply in relation to anything done, or proposed to be done, in the performance of the Authority's function under section 28(1).

(2) This section overrides the *Infrastructure Western Australia Act 2019* section 19(5).

31. Authority business concern: company constitution

(1) This section applies to a company —

(a) that is established under the *Corporations Act 2001* (Cth) in reliance on the *Public Transport Authority Act 2003* section 13(2)(d); and

(b) through which the Authority does anything, or proposes to do anything, under section 7(2)(b) or (c) or 28(2)(b) or (c) or (6)(b) or (c).

(2) The Authority must ensure that the company's constitution —

(a) contains provisions to the effect of those set out in subsection (3); and

(b) is consistent with this Act.

(3) The provisions are as follows —

(a) shares in the company must not be issued or transferred except with the written approval of the Minister;

(b) a person must not be appointed as a director of the company except with the written approval of the Minister;

(c) the company must, at the request of the Authority, give the Authority any information in the company's possession that the Authority requires to perform a function of the Authority under this Act or any other Act.

32. Authority business concern: Authority staff member or public service officer may be director

(1) This section applies to an Authority business concern through which the Authority does anything, or proposes to do anything, under section 7(2)(b) or (c) or 28(2)(b) or (c) or (6)(b) or (c).

(2) An Authority staff member or another person who is a public service officer —

(a) may become a director of the Authority business concern; and

(b) may, as a director, represent the State's interests (including those of the Authority).

33. Authority business concern: Minister entitled to information

(1) This section applies to an Authority business concern through which the Authority does anything under section 7(2)(b) or (c) or 28(2)(b) or (c) or (6)(b) or (c).

(2) The Minister is entitled —

(a) to have information in the possession of the Authority business concern; and

(b) if the information is in or on a document — to have, and make and retain copies of, that document.

(3) In subsection (2)(b) —

document includes any tape, disk or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise.

(4) For the purposes of subsection (2), the Minister may do any of the following —

(a) direct the Authority business concern to provide information in its possession to the Minister;

(b) direct the Authority business concern to give the Minister access to information in its possession;

(c) for the purposes of paragraph (b), make use of the staff of the Authority business concern to obtain the information and provide it to the Minister.

(5) The Authority business concern must —

(a) comply with a direction given to it under subsection (4)(a) or (b); and

(b) make staff and facilities available to the Minister for obtaining information under subsection (4)(c).

(6) A disclosure of information under this section is not —

(a) a breach of contract or confidence or any other civil wrong; or

(b) a breach of duty under a written law; or

(c) a breach of, or an offence under, a provision of a written law that prohibits or restricts the disclosure of information.

(7) In this section, references to ***information*** are to information specified by the Minister that relates to the functions of the Authority under this Act or any other Act.

34. Directions by Minister to Authority or Authority business concern

(1) The Minister may direct the Authority or a wholly owned Authority business concern to do, or not to do, anything —

(a) for the purposes of an authorised acquisition or authorised reorganisation; or

(b) in, or in relation to, the performance of a function of the Authority under section 27 or 28; or

(c) otherwise for the purposes of this Act.

(2) For the purposes of subsection (1), an Authority business concern is ***wholly owned*** if —

(a) the Authority business concern is a company; and

(b) no share in the company is held by an entity that is neither —

(i) the Authority; nor

(ii) another Authority business concern that is wholly owned under this subsection.

(3) The direction may be general in nature or relate to a particular matter.

(4) The Authority or Authority business concern must comply with the direction.

35. Treasurer: indemnities and guarantees

(1) The Treasurer may, in the name and on behalf of the State, give an indemnity or guarantee in respect of a matter related to —

(a) an authorised acquisition or authorised reorganisation; or

(b) the action (whether under a transfer order or otherwise) by which anything is transferred, granted or otherwise acquired or disposed of in connection with an authorised acquisition or authorised reorganisation; or

(c) the performance of a function of the Authority under section 27 or 28.

(2) The Treasurer may, in the name and on behalf of the State, give to any person, who is or has been either of the following, an indemnity against any liability determined by the Treasurer (including any civil liability under the *Corporations Act 2001* (Cth)), whether or not the liability relates to a matter referred to in subsection (1) —

(a) an Authority staff member;

(b) a director, officer or employee of an Authority business concern.

(3) Any money payable under an indemnity or guarantee given under this section must be paid by the Treasurer.

(4) Payments made under subsection (3) are charged to the Consolidated Account, which this subsection appropriates accordingly.

36. Treasurer: acquisition by State of certain liabilities

(1) This section applies in relation to a liability of the Authority or an Authority business concern.

(2) The Treasurer may, in the name and on behalf of the State, agree to take over a liability in connection with —

(a) an authorised acquisition or authorised reorganisation; or

(b) the performance of a function of the Authority under section 27 or 28.

(3) If the discharge or performance of the liability was guaranteed by the State, the agreement may also provide for —

(a) the release by the State of any security held by the State in connection with the guarantee; or

(b) the release of a person from an undertaking that the person gave to the State in relation to any security described in paragraph (a).

(4) The Treasurer may authorise the payment of money to discharge or perform a liability that the State has taken over under subsection (2), whether by terminating the liability or otherwise.

(5) Payments authorised under subsection (4) are charged to the Consolidated Account, which this subsection appropriates accordingly.

37. Borrowing

(1) The Treasurer may lend moneys to an entity —

(a) for the purposes of an authorised acquisition or authorised reorganisation; or

(b) for the purposes of a function of the Authority under section 27 or 28; or

(c) for the purposes of the financing, after an authorised reorganisation, of the below rail freight business or part that is the subject of the authorised reorganisation; or

(d) otherwise for the purposes of this Act.

(2) Lending under subsection (1) is to be on the terms relating to repayment, payment of interest and other matters that the Treasurer determines.

(3) Payments made by way of a loan under subsection (1) are charged to the Consolidated Account, which this subsection appropriates accordingly.

(4) An entity may, if the Treasurer approves, borrow moneys from the Western Australian Treasury Corporation —

(a) for the purposes of an authorised acquisition or authorised reorganisation; or

(b) for the purposes of a function of the Authority under section 27 or 28; or

(c) for the purposes of the financing, after an authorised reorganisation, of the below rail freight business or part that is the subject of the authorised reorganisation; or

(d) otherwise for the purposes of this Act.

Note for this subsection:

This subsection enables the Western Australian Treasury Corporation to lend, for the purposes described in this subsection, moneys to an entity under the *Western Australian Treasury Corporation Act 1986* section 9(1)(a)(ii).

(5) This section does not limit or otherwise affect any other power, under a written law or otherwise, that —

(a) is a power to borrow or lend moneys; or

(b) otherwise relates to the extending or receiving of financial accommodation.

Part 4 — General provisions

38. Interaction with *Rail Freight System Act 2000* Part 2

(1) This Act is in addition to the *Rail Freight System Act 2000* Part 2.

(2) Accordingly, no proposal is required under the *Rail Freight System Act 2000* section 11 for, and sections 12 and 13 of that Act do not apply to, anything done or proposed to be done —

(a) for the purposes of an authorised acquisition or authorised reorganisation; or

(b) otherwise under, or for the purposes of, this Act.

(3) In the *Rail Freight System Act 2000* section 16(2)(a), the reference to anything disposed of under that Act includes anything used in, or for the purposes of, a below rail freight business that is the subject of an authorised acquisition or authorised reorganisation.

39. Directions under Act and displacement of *Corporations Act 2001* (Cth)

(1) None of the following provisions makes the Minister a director of an Authority business concern or other entity for the purposes of the *Corporations Act 2001* (Cth) —

(a) section 21;

(b) section 33;

(c) section 34;

(d) section 44(3)(a) and (4).

(2) If a direction is given to a State entity under a provision listed in subsection (1), no State entity is liable for the fact of doing anything, or omitting to do anything, in good faith —

(a) in compliance with the direction; or

(b) otherwise for the purpose of ensuring compliance with the direction.

(3) Each of the following provisions is declared to be a Corporations legislation displacement provision for the purposes of the *Corporations Act 2001* (Cth) section 5G in relation to the Corporations legislation generally —

(a) subsections (1) and (2);

(b) a provision listed in subsection (1);

(c) section 31;

(d) section 32.

40. Arrangements with certain entities

(1) Either of the following may be made with an entity listed in subsection (2) —

(a) an arrangement for the purposes of an authorised acquisition or authorised reorganisation;

(b) any other arrangement under, or for the purposes of, this Act.

(2) The entities are as follows —

(a) an entity established or located outside the State (including outside Australia);

(b) a body, or the holder of an office, post or position, that is established or continued for a public purpose under a law of the Commonwealth, another State or a Territory.

(3) This section does not limit or otherwise affect —

(a) the other entities with which an arrangement may be made; or

(b) any other power, under a written law or otherwise, to make an arrangement with an entity listed in subsection (2).

41. Exemption from State tax

(1) State tax is not payable in relation to —

(a) anything that occurs by operation of this Act; or

(b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) for the purposes of an authorised acquisition or authorised reorganisation.

(2) The Minister may, at the request of any person who the Minister considers to have an interest in the matter, certify in writing that —

(a) a specified thing occurred by operation of this Act; or

(b) a specified thing was done for the purposes of an authorised acquisition or authorised reorganisation.

(3) For all purposes and in all proceedings, a certificate under subsection (2) is sufficient evidence of the matters it certifies unless the contrary is shown.

(4) The exemption under subsection (1) does not apply in relation to a thing that occurs or is done if the Minister directs (whether in a transfer order or otherwise in writing) that the exemption does not apply in relation to the thing.

42. Liability

(1) No compensation is payable by or on behalf of the State —

(a) because of the enactment or operation of this Act or for the consequences of its enactment or operation; or

(b) because of any statement or conduct relating to the enactment of this Act; or

(c) in connection with an authorised acquisition or authorised reorganisation.

(2) Subsection (1) does not apply in relation to —

(a) any consideration payable under an arrangement made for the purposes of an authorised acquisition or authorised reorganisation; or

(b) any compensation payable in connection with the performance of an obligation arising under an

arrangement made for the purposes of an authorised acquisition or authorised reorganisation.

(3) The Authority has no liability in respect of an Authority business concern, or an act or omission of an Authority business concern, just because the Authority does, or has done, anything through the Authority business concern under section 7(2)(b) or (c) or 28(2)(b) or (c) or (6)(b) or (c).

(4) Subsection (3) does not limit, or otherwise affect, any other grounds on which the Authority has no liability in respect of any matter.

43. Government agreement not affected

(1) Nothing in this Act, or done under this Act, limits or otherwise affects a Government agreement or a right or obligation of a party to a Government agreement.

(2) The operation of the *Government Agreements Act 1979* in relation to this Act is not limited or otherwise affected by this Act or anything done under this Act.

(3) This section does not limit or otherwise affect section 23.

44. Orders

(1) An order made by the Minister under this Act —

(a) is not subsidiary legislation; and

(b) must be published in the *Gazette*; and

(c) comes into operation on the day specified in the order, which cannot be earlier than the publication day; and

(d) comes into operation at the beginning of the day specified under paragraph (c), unless the order specifies a different time on that day at which it comes into operation.

(2) Subsection (1)(c) and (d) are subject to section 17(2).

(3) A power of the Minister to make an order under this Act includes power to do any of the following in the order —

(a) give directions to a State entity, specified in the order, for implementing, or otherwise for giving effect to, the order;

(b) make provision that deals with ancillary or incidental matters;

(c) make provision that deals with matters of a transitional, savings or application nature.

(4) A direction under subsection (3)(a) —

(a) may be general in nature or relate to a particular matter; and

(b) must be complied with by the specified State entity.

(5) The provision that may be made under subsection (3)(c) includes (without limitation) provision that corresponds, or that is similar, to the *Interpretation Act 1984* section 37(1).

(6) The Minister can make an order under section 6(1) or 9(1) only if the Treasurer has agreed to the contents of the order.

(7) Subsection (6) does not apply if the office of Treasurer is held by the same person who holds the office of the Minister.

45. Regulations

(1) The Governor may do either or both of the following —

(a) make regulations as permitted under subsection (2);

(b) make regulations otherwise prescribing matters that are necessary or convenient to be prescribed for giving effect to this Act.

(2) Regulations may regulate, or otherwise make provision for the purposes of or in relation to, any of the following —

(a) an authorised acquisition or authorised reorganisation;

(b) the performance of a function of the Authority under section 27 or 28;

(c) an acquired below rail freight business;

(d) an Authority business concern;

(e) matters that are otherwise necessary or convenient to deal with as a consequence of anything contained in, or done or to be done under, Part 2 or 3;

(f) matters of a transitional, savings or application nature that arise in connection with the enactment of this Act or its coming into operation.

(3) Without limiting subsection (2)(f), regulations made under subsection (2)(f) may provide for this Act or another written law —

(a) not to apply in relation to a matter; or

(b) to apply with modifications in relation to a matter.

(4) Regulations under this section may provide for a contravention of a provision of the regulations to be an offence, and provide, for an offence against the regulations, a penalty not exceeding a fine of $10 000.

(5) Regulations under this section may be expressed to come into operation before the publication day for the regulations.

(6) To the extent that regulations come into operation before the publication day, the regulations do not operate —

(a) to affect in a manner prejudicial to any non-State entity the rights of that entity existing before the publication day; or

(b) to impose liabilities on any non-State entity in respect of anything done or omitted to be done before the publication day.

Part 5 — *Rail Freight System Act 2000* amended

46. Act amended

This Part amends the *Rail Freight System Act 2000*.

47. Section 9 amended

At the end of section 9 insert:

Note for this section:

See also the *Rail Freight System (Acquisition and Reorganisation) Act 2026* section 38.

48. Section 42 amended

After section 42(2) insert:

(2A) Subsection (1) is subject to the *Rail Freight System (Acquisition and Reorganisation) Act 2026* section 11(1).

49. Section 105 amended

In section 105 delete "135 and 136" and insert:

136 and 147

Note: The heading to amended section 105 is to read:

Sections 136 and 147 not to apply

Notes

This is a compilation of the *Rail Freight System (Acquisition and Reorganisation) Act 2026*. For provisions that have come into operation see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
Rail Freight System (Acquisition and Reorganisation) Act 2026	21 of 2026	16 Nov 2026	16 Nov 2026 (see s. 2)

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
acquired below rail freight business	3(1)
amending order	3(1), 16(1)
arrangement	3(1)
asset	3(1)
authorised acquisition	3(1)
authorised reorganisation	3(1)
Authority	3(1)
Authority business concern	3(1)
Authority staff member	3(1)
below rail freight business	3(1)
bound recipient	25(1)
business concern	3(1)
business day	3(1)
constitution	3(1)
correction order	3(1), 17(1)
corridor land	3(1)
director	3(1)
document	33(3)
entity	3(1)
existing arrangement	8(3), 14(3)
Government agreement	3(1)
information	32(7)
interest in land	3(1)
liability	3(1)
non-State entity	3(1)
participate in	3(1)
party	3(1)
protected event	14(1)
publication day	3(1)
purposes	3(1), 3(3)
record	3(1)
registration official	3
related	8(3)
relevant Authority business concern	10(3)
relevant entity	7(4)
relevant record	3(1)
reorganisation	3(1), 9(2)
right	3(1)
securities	3(1)

specified ..... 3(1), 15(2)
State entity ..... 3(1)
State tax ..... 3(1)
transfer order ..... 3(1), 15(1)
transfer time ..... 3(1)
wholly owned ..... 34(2)

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