

STATE TRANSPORT CO-ORDINATION.

10° Elizabeth II., No. LIX.

No. 59 of 1961.

AN ACT to amend the State Transport Co-ordination Act, 1933-1959.

[Assented to 28th November, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title
and citation.

1. (1) This Act may be cited as the *State Transport Co-ordination Act Amendment Act, 1961.*

Reprinted as
approved for
reprint
9th April,
1959, and
amended by
Act No. 57
of 1959.

(2) In this Act the State Transport Co-ordination Act, 1933-1959, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the State Transport Co-ordination Act, 1933-1961.

2. This Act shall come into operation on a day to be fixed by proclamation. Commence-
ment.

3. Section two of the principal Act is amended— S. 2
amended.

- (a) by substituting for the passage, “Division (1)—State Transport Board—Constitution—Officers” in lines five and six, the passage, “Division (1)—Commissioner of Transport—Transport Advisory Board—Constitution—Officers”; and
- (b) by substituting for the words, “State Transport Board” in line seven, the words, “Commissioner of Transport and Transport Advisory Board”.

4. Section three of the principal Act is amended— S. 3
amended.

- (a) by substituting for the interpretations, “Board” the following interpretation—
 - “Board” means the Transport Advisory Board constituted under section five of this Act; ;
- (b) by adding after the interpretation, “Commercial goods vehicle” the following interpretations—
 - “Commissioner” means the Commissioner of Transport constituted under this Act;
 - “Deputy Commissioner” means the person appointed under this Act to the office of Deputy Commissioner of Transport; ;
- (c) by deleting the words, “or the road board of any road district” in lines two and three of the interpretation, “Local Authority”; and
- (d) by substituting for the word, “Board” in lines two and seven of the interpretation, “Officer”, the word, “Commissioner”.

S. 4A
added.

5. The principal Act is amended by adding after section four a section as follows—

Saving.

4A. (1) All the right, title and interest of The Western Australian Transport Board established under this Act, existing immediately prior to the coming into operation of the State Transport Co-ordination Act Amendment Act, 1961, in and to all property owned by that Board shall, by force of this section, be transferred to and vested in the Commissioner and that Board shall be dissolved.

(2) Subject to this Act, all rights, obligations and liabilities of The Western Australian Transport Board existing immediately prior to the commencement of the State Transport Co-ordination Act Amendment Act, 1961, shall by force of this section be vested in or imposed on the Commissioner, and a reference in a law of the State, contract, agreement or other instrument in force immediately prior to the coming into operation of the State Transport Co-ordination Act Amendment Act, 1961, shall be read as a reference to the Commissioner.

(3) Any right of action or power of prosecution had by or against The Western Australian Transport Board shall continue to be had by and may be enforced by or against the Commissioner.

Part II,
Division (1)
amended and
ss. 4B to 4H
added.

6. The principal Act is amended by substituting for the heading "Division (1)—State Transport Board—Constitution—Officers" that immediately precedes section five, the following heading and sections—

*Division (1)—Commissioner of Transport—Transport
Advisory Board—Constitution—Officers.*

Commissioner
of Transport.

4B. (1) For the purposes of this Act there shall be a Commissioner of Transport who shall be appointed and hold office as provided in section four D of this Act.

(2) The Commissioner, subject to this Act and to the general control of the Minister,—

- (a) is responsible for the administration of this Act; and
- (b) shall, in relation to any matter referred to the Board for advice pursuant to this Act, administer the Act having regard to the advice given by the Board.

(3) For the purposes of this Act the Commissioner of Transport—

- (a) is a body corporate;
- (b) shall have a seal; and
- (c) is capable of acquiring, holding and disposing of real and personal property and of suing and being sued in his corporate name.

(4) All courts and judges and persons acting judicially shall take judicial notice of the seal of the Commissioner affixed to any document and shall presume that it was duly affixed.

4C. (1) The Commissioner shall be assisted by— Deputy
Commis-
sioner.

- (a) a Deputy Commissioner of Transport who shall be appointed and hold office as provided in section four D of this Act; and
- (b) a Board constituted under the provisions of section five of this Act.

(2) The Deputy Commissioner shall give such advice and assistance to the Commissioner as the Commissioner requires and shall perform such duties as the Commissioner directs.

4D. (1) The Commissioner and Deputy Commissioner— Appointment
of Commis-
sioner and
Deputy
Commis-
sioner,
term and
conditions of
appointment.

- (a) shall be appointed by the Governor for such period, not exceeding seven years, as the Governor determines, but are eligible for re-appointment;

- (b) hold office for the term for which each is appointed subject to the provisions of this Act;
- (c) shall not be financially interested, other than in their respective capacities as Commissioner or Deputy Commissioner and for the purposes of this Act, in any form of transport service or contract relating to transport; and
- (d) shall be paid such salary and allowances as the Governor determines.

(2) The Governor may terminate the appointment of the Commissioner or Deputy Commissioner for inability, inefficiency or misbehaviour.

Vacation of office of Commissioner or Deputy Commissioner.

4E. If the Commissioner or Deputy Commissioner—

- (a) becomes permanently incapable of performing his duties;
- (b) engages, without the approval in writing of the Minister, in any paid employment outside the duties of his office;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his salary for their benefit; or
- (d) resigns his office in writing under his hand addressed to the Governor, and the resignation has been accepted,

the office of the Commissioner or the Deputy Commissioner, as the case requires, shall be vacated.

Appointment of officer under Public Service Act, 1904, not to prejudice his rights under that Act, etc.

4F. If the person appointed to the office of Commissioner or Deputy Commissioner is an officer within the meaning of the Public Service Act, 1904, the appointment shall be without prejudice to the provisions of that Act and all

other Acts applying to that person as such an officer and does not prejudice his rights as such under any of those Acts.

4G. In the case of illness, suspension or absence of the Commissioner, the Deputy Commissioner shall act as the deputy of the Commissioner during the illness, suspension or absence and he has, while so acting, all the powers and shall perform all the duties of the Commissioner.

Deputy Commissioner to act for Commissioner in certain cases.

4H. The Minister may grant leave of absence to the Commissioner and Deputy Commissioner upon such terms and conditions as to the payment of salary and otherwise as the Minister determines.

Leave of absence.

7. Section five of the principal Act is amended—
(a) by repealing subsection (1) and substituting the following subsection—

S. 5 amended.

(1) For the purposes of this Act the Governor shall appoint an advisory board by the name of the Transport Advisory Board having the powers and functions conferred on it by this Act and which shall consist of—

State Transport Advisory Board constituted.

- (a) the person holding the office of Commissioner, who shall be the Chairman of the Board; or in his absence the person holding the office of Deputy Commissioner, who shall be the Deputy Chairman of the Board; and
- (b) four other members, two of whom shall represent rural industries and two city interests, but none of whom shall be financially interested in the operation of any form of transport service or contract relating to transport. ;

(b) by adding before the word, "Board" wherever it appears in subsection (2), the words, "Commissioner and";

(c) by repealing subsections (4) and (5);

(d) by repealing subsection (6) and re-enacting it as follows—

(6) Four members of the Board, of whom the Chairman or the Deputy Chairman when acting as Chairman of the Board, shall be one, form a quorum at a meeting of the Board. ;

(e) by adding after the word, "Board" in line one of subsection (7), the passage, " , other than the Chairman or the Deputy Chairman of the Board,";

(f) by repealing subsection (8) and re-enacting it as follows—

(8) The members of the Board, other than the Chairman and the Deputy Chairman thereof, while acting as such are entitled to receive such fees and expenses as the Governor from time to time determines in respect of attendance at meetings of the Board or whilst engaged on any business of the Board. ;

(g) by adding after subsection (9), subsections as follow—

(10) The Chairman or Deputy Chairman of the Board shall not be deemed—

(a) to be concerned or interested in any contract or agreement specified in paragraph (c) of subsection (9) of this section; or

(b) to participate or claim to be entitled to participate in the profit of any such contract or agreement,

by reason only of his becoming a party in his capacity as Commissioner or Deputy Commissioner to such a contract or agreement under and for the purposes of this Act.

(11) Unless the Minister directs otherwise, the Board shall meet only once in each month at such times and places as the Board determines.

(12) The Chairman shall preside at all meetings thereof at which he is present and in the absence of the Chairman the Deputy Chairman shall preside.

(13) Questions arising at a meeting of the Board shall be decided by a majority of the votes of the members thereof present and voting, each member, including the Chairman, but not including the Deputy Commissioner, unless he is presiding at the meeting, having one vote and where there is an equal division of votes on a motion the motion is lost.

8. Section seven of the principal Act is amended S. 7 amended.
by—

(a) adding after the section number, "7" the subsection designation, "(1)"; and

(b) adding the following subsection—

(2) The exercise of the rights, powers, authorities or functions, or the performance of the duties or obligations, of the Board is not affected by reason only of there being a vacancy in the office of member. Vacancy not to invalidate proceedings.

9. Section nine of the principal Act is amended— S. 9 amended.

(a) by substituting for the word, "Board" wherever it appears in the section, the word, "Commissioner";

(b) by adding after subsection (3) a subsection as follows—

(4) The person appointed secretary to the Commissioner shall also be and act as secretary to the Board. .

S. 10
repealed and
re-enacted.

10. Section ten of the principal Act is repealed and re-enacted as follows—

Powers and
authorities.

10. (1) Subject to this Act, the Commissioner may of his own volition or under the direction of the Minister shall—

(a) make investigation and inquire into transport matters and in making those investigations and inquiries the Commissioner shall give consideration to all or any of the following factors—

(i) the question of transport generally in the light of service to the community;

(ii) the needs of the State for economic development;

(iii) the industrial conditions under which all forms of transport are conducted;

(iv) the impartial and equitable treatment of all conflicting interests;

(b) demand and obtain information relating to matters connected with the internal transport of the State, including transport controlled by the Crown or any agency of the Crown;

(c) call tenders for road transport with or without inviting premiums in any case where the Commissioner, after receiving the advice of the Board, considers the requirements of a district are not adequately served by any form of transport;

(d) after receiving the advice of the Board thereon, advise the Minister on all or any of the following matters—

- (i) the areas that because of the absence of a railway service or an adequate railway service require to be served by road transport;
- (ii) the routes to be followed by such road transport and the classes of goods to be carried thereby; and
- (iii) the extent to which it is expedient that subsidies be granted in aid of such road transport.

(2) The Commissioner shall report in writing to the Minister the result of any investigation or inquiry made by him pursuant to paragraph (a) of subsection (1) of this section and for the purpose of such investigation or inquiry the Commissioner has the powers, authority and protection of a Royal Commissioner under the Royal Commissioners' Powers Act, 1902.

(3) The provisions of the Royal Commissioners' Powers Act, 1902, with the necessary modifications, apply to any investigation and inquiry made by the Commissioner pursuant to subsection (1) of this section.

(4) The Commissioner shall consider and determine all applications for licenses in respect of public vehicles and may, without limiting any of the provisions of this Act—

- (a) specify any particular conditions that the Commissioner may impose on the granting or holding of a license;
- (b) determine in respect of any particular license or group of licenses the conditions that shall be imposed on the granting and holding of the license or licenses.

- (5) The Board shall—
- (a) advise and assist the Commissioner in or in connection with the general administration of this Act;
 - (b) advise the Commissioner on such matters as he may refer to the Board for advice; and
 - (c) subject to the direction in writing of the Minister, determine the policy of the Commissioner in the administration of this Act in relation to any particular matter referred to it by the Minister.

(6) The Board shall in writing report to the Minister when and as often as it is of opinion that the Commissioner is not administering this Act in relation to any matter which has been referred to the Board for advice pursuant to paragraph (c) of subsection (5) of this section.

(7) For the purpose of enabling the Board to effectually carry out its duties under this Act, the Board may of its own volition or under the direction of the Minister shall—

- (a) make such enquiries as it thinks fit;
- (b) request the Commissioner to furnish the Board with such information as the Board considers necessary for that purpose.

(8) The Commissioner shall, subject to this Act, comply with any request made by the Board under subsection (7) of this section.

S. 10A
added.

11. The principal Act is amended by adding after section ten a section as follows—

Delegation.

10A. (1) The Commissioner may, and shall at the request of the Minister to the extent specified in the request, either generally or in relation to any particular matter, by writing under his seal, delegate to the Deputy Commissioner any of his powers or functions under this Act, except this power of delegation, so that the delegated powers and functions may be exercised by the Deputy Commissioner in accordance with the instrument of delegation.

(2) A delegation under this section is revocable at will by the Commissioner, but where the delegation was made at the request of the Minister the Commissioner shall not revoke the delegation unless the Minister so directs and a delegation does not prevent the exercise of any power or function by the Commissioner.

12. Section eleven of the principal Act is ^{S. 11} amended—

- (a) by substituting for the passage, "Board shall, or of its" in line two of subsection (1), the passage, "Commissioner shall, or of his";
- (b) by substituting for the word, "Board" in lines one and five of subsection (2), the word, "Commissioner"; and adding after the word, "recommend" in line five of that subsection, the passage, ", if the Board concurs in the recommendation,".
- (c) by substituting for the word, "Board", wherever it occurs in subsections (3), (4) and (5), the word, "Commissioner";
- (d) by substituting for the passage, "Board, which" in line four of subsection (7), the passage, "Commissioner, who";
- (e) by substituting for the word, "Board's" in line five of subsection (7), the word, "Commissioner's"; and
- (f) by adding after subsection (7) the following subsection—

(8) The Commissioner shall—

- (a) in exercising any of his powers or functions under this section confer with and obtain the advice of the Board;
- (b) for the purpose of assisting the Board in so advising the Commissioner, make full disclosure to the Board of the

inquiries made by him under subsection (1) of this section and the result thereof; and

- (c) make such further inquiries under that subsection as the Board may direct.

S. 12
amended.

13. Section twelve of the principal Act is amended by substituting for the word, "Board", wherever it occurs in the section, the word, "Commissioner".

Ss. 14, 14A, 15,
18, 19, 20,
22, 24, 25, 26,
27, 29 and 30
amended.

14. The following sections of the principal Act, namely sections fourteen, fourteen A, fifteen, eighteen, nineteen, twenty, twenty-two, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-nine and thirty, are amended by substituting for the word, "Board", wherever it appears, the word, "Commissioner" and effecting consequential grammatical alterations.

S. 31
amended.

15. Section thirty-one of the principal Act is amended—

- (a) by substituting for the word, "Board", wherever it appears, the word, "Commissioner"; and
- (b) by deleting the words, "or road district" in line six of subsection (2) and the words, "or board" in the last line of that subsection.

S. 34
amended.

16. Subsection (1) of section thirty-four of the principal Act is amended by repealing paragraph (c) and re-enacting it as follows—

- (c) is being used solely for any carriage specified in the First Schedule to this Act.

17. The following sections of the principal Act, namely sections thirty-five, thirty-five A, thirty-seven, thirty-eight, thirty-nine, forty, forty-two, forty-three and forty-six are amended by substituting for the word, "Board", wherever it appears the word, "Commissioner" and effecting consequential grammatical alterations.

Ss. 35, 35A, 37, 38, 39, 40, 42, 43 and 46 amended.

18. Part IIIA of the principal Act is repealed.

Part IIIA. repealed.

19. Sections forty-nine and fifty-five of the principal Act are amended by substituting for the word, "Board", wherever it appears, the word, "Commissioner".

Ss. 49 and 55 amended.

20. Section fifty-six of the principal Act is amended—

S. 56 amended.

- (a) by substituting for the word, "Board" in line one of subsection (1) and paragraph (c) of subsection (2), the word, "Commissioner";
- (b) by deleting the passage, "the giving of any such direction or authority, or" in paragraph (d) of subsection (2); and
- (c) by adding after the word, "act", being the last word in paragraph (d), the words, "or (e) of the due appointment of the Commissioner".

21. Section fifty-eight of the principal Act is amended—

S. 58 amended.

- (a) by substituting for the word, "Board" in line one, the word, "Commissioner"; and
- (b) by substituting for the word, "its" in line one of paragraph (b) of subsection (1), the words, "the Commissioner's".

S. 58A
amended.

22. Section fifty-eight A of the principal Act is amended—

- (a) by substituting for the word, "Board" in line three of subsection (1), the word, "Commissioner";
- (b) by substituting for the passage, "paragraph (f) of section ten" in line four of subsection (1), the passage, "paragraph (d) of subsection (1) of section ten"; and
- (c) by substituting for the word, "Board" in line three of subsection (2), the word, "Commissioner".

S. 59
amended.

23. Section fifty-nine of the principal Act is amended by adding before the word, "Board" in lines two, six and seven, the words, "Commissioner or".

S. 60
amended.

24. Section sixty of the principal Act is amended—

- (a) by substituting for the word, "Board", wherever it appears in the section, the word, "Commissioner";
- (b) by substituting for the words, "otherwise than" in line three of paragraph (a) of subsection (1), the words, "including those";
- (c) by substituting for the words, "other than" in line two of paragraph (c) of subsection (1), the word, "including";
- (d) by deleting the passage, "subject to the provisions of subsections (4) and (5) of this section" in lines one, two and three of subsection (2); and
- (e) by repealing subsections (4), (5) and (6).

S. 61
repealed.

25. Section sixty-one of the principal Act is repealed.

26. Section sixty-two of the principal Act is amended by adding before the word, "Board" in lines three and six of subsection (2) and line two of subsection (3), the words, "Commissioner or".

S. 62
amended.

27. The First Schedule to the principal Act is amended—

First
Schedule
amended.

- (a) by adding after the word, "oats" in line three of clause three, the passage, "for sale or, in the case of livestock, for sale or agistment, irrespective of quantity or value";
 - (b) by substituting for the word, "Board" in line two of clause eleven, the word, "Commissioner" and effecting consequential grammatical alterations;
 - (c) by substituting for the words, "special purpose" in line one of clause twelve, the word, "carriage"; and
 - (d) by substituting for the word, "Board", in line two of clause twelve, the word, "Commissioner".
-