

WESTERN AUSTRALIA

ANNO QUINQUAGESIMO TERTIO

VICTORIÆ REGINÆ

No. 1

An Act to make further provision for the Management  
and Working of Railways.

[Assented to 13th August, 1889.]

BE it enacted by His Excellency the Governor of Western Australia  
and its Dependencies, by and with the advice and consent of  
the Legislative Council thereof, as follows:—

Short title

1. This Act may be cited for all purposes as ‘The Railway Act,  
1889.’

Sections 35, 36,  
37, and 38 of 24  
and 26 Vic.,  
cap. 97 (Imperial  
Act) to be in  
force

2. Whereas an Act passed by the Imperial Parliament in the  
Twenty-fourth and Twenty-fifth years of Her Majesty, intituled ‘An  
Act to consolidate and amend the Statute Law of England and Ireland  
relating to Malicious Injuries to Property,’ was *inter alia* adopted by  
‘The Criminal Law Consolidation Ordinance, 1865’; And whereas it  
is expedient that the seventeenth section of ‘The Railways Amendment  
Act, 1881,’ be repealed: Be it enacted that the said seventeenth section  
be and is hereby repealed, and that sections thirty-five, thirty-six,  
thirty-seven, and thirty-eight of the said first mentioned Act shall be  
and remain in full force and effect, which said sections are set forth in  
the Schedule hereto.

Sec. 17 of 44 Vic.,  
17, repealed

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3. None of the penalties provided by the said sections of the Imperial Act in the Schedule to this Act contained shall apply to the obstruction of a Railway by any horse, ass, sheep, swine, or other beast, or cattle of any kind depasturing on land adjoining such Railway or part of such Railway not enclosed by a 'sufficient fence' within the meaning of the thirtieth section of 'The Cattle Trespass, Fencing, and Impounding Act, 1882.'

Exception as to  
trespass of cattle  
on unfenced land

4. When in or about any of the Railways, or any of the works or buildings connected with any of the Railways, or any building or place, whether open or enclosed, used in working such Railway, any of the following accidents take place in the course of working any of the Railways (that is to say) :—

Inquiry to be  
held in case of  
accidents on  
Railway

- (1) Any accident attended with loss of life or personal injury to any person whomsoever ;
- (2) Any collision where one of the trains is a passenger or mixed passenger and goods train ;
- (3) Any passenger train or any part of a passenger train accidentally leaving the rails ;
- (4) Any accident whatsoever which shall cause or be likely to cause loss of life or personal injury ;

shall be fully reported to the Commissioner of Railways within twenty-four hours of its occurrence, and the Commissioner of Railways may then, if he deem fit, hold or cause to be held an inquiry. In the case of a private railway company, failure to report as aforesaid shall render such company liable to a penalty not exceeding Twenty pounds per diem so long as such failure shall continue.

5. Every inquiry which the Commissioner of Railways shall by this Act make or direct to be made shall be made in accordance with the following provisions :—

Regulating in-  
quiries before  
the Commissioner  
of Railways or  
his substitute

- (1) The inquiry shall be made in public, before the Commissioner of Railways, or an officer appointed on his behalf, whose appointment shall be by writing, which shall specify all the matters referred to him.
- (2) A week's notice at the least shall be given by the Commissioner of Railways to the parties upon whose representation the Commissioner of Railways shall have directed the inquiry, of the time and place at which the inquiry is to be commenced.
- (3) The inquiry shall be commenced at the time and place so appointed, and may be adjourned from time to time, as may be necessary, to such time or place as the Commissioner of Railways, or the person holding the inquiry for him, shall think fit.
- (4) The Commissioner of Railways or the officer appointed by him for this purpose shall by summons, on the application of any party interested in the inquiry, require the attendance, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him, and every person summoned shall attend and answer all questions touching the matter to be

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inquired into; and any person who wilfully disobeys any such summons or refuses to answer any question put to him by the Commissioner of Railways, or the officer appointed by him for the purpose of such inquiry, shall be liable to a penalty not exceeding Five pounds: Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, or unless he be in the employment of the Railway.

- (5) The Commissioner of Railways or the officer appointed by him to make the inquiry may and shall administer an oath, or an affirmation where an affirmation in lieu of an oath would be admitted in a Court of Justice, to any person tendered or summoned as a witness on the inquiry: And any person who upon oath or affirmation wilfully gives false evidence before the Commissioner of Railways, or the officer appointed by him, shall be guilty of perjury.
- (6) The Commissioner of Railways or the officer appointed by him as aforesaid shall have, for the purpose of such inquiry, all the powers of a Court of Summary Jurisdiction when acting as a Court in the exercise of its ordinary jurisdiction, and in addition thereto the following powers, namely:—
- (a) Power to enter and inspect any place or building, the entry and inspection whereof appears to him requisite for the said purpose.
- (b) Power to require and enforce the production of all books, papers, and documents which he may consider necessary for the said purpose.

Commissioner to report to the Governor

6. The Commissioner of Railways shall, after such inquiry shall have been held as aforesaid, make a report to the Governor stating the causes of the accident and all the circumstances attending the same, and making any observations thereon as to him shall seem fit on the evidence or on any matter arising out of such inquiry.

Definition of 'Railway'

7. The word 'Railway' in this Act shall apply to all railways, branch railways and extensions, and steam tramways, throughout the Colony, whether vested or not in the said Commissioner.

F. NAPIER BROOME,  
GOVERNOR.

## SCHEDULE

## INJURIES TO RAILWAY CARRIAGES AND TELEGRAPHS

Placing wood, &c., on Railway with intent to obstruct or overthrow any engine, &c.

35. Whosoever shall unlawfully and maliciously put, place, cast, or throw upon or across any Railway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any Railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any Railway, or shall unlawfully and maliciously make or show, hide or remove, any signal or light

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upon or near to any Railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such Railway, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen, with or without whipping.

36. Whosoever, by any unlawful act, or by any wilful omission or neglect, shall obstruct or cause to be obstructed any engine or carriage using any Railway, or shall aid or assist therein, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Obstructing  
engines or  
carriages on  
Railways

37. Whosoever shall unlawfully and maliciously cut, break, throw down, destroy, injure, or remove any battery, machinery, wire, cable, post, or other matter or thing whatsoever, being part of or being used or employed in or about any electric or magnetic telegraph, or in the working thereof, or shall unlawfully and maliciously prevent or obstruct in any manner whatsoever the sending, conveyance, or delivery of any communication by any such telegraph, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour: Provided that if it shall appear to any justice, on the examination of any person charged with any offence against this section, that it is not expedient to the ends of justice that the same should be prosecuted by indictment, the justice may proceed summarily to hear and determine the same, and the offender shall, on conviction thereof, at the discretion of the Justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay such sum of money not exceeding Ten pounds as to the Justice shall seem meet.

Injuries to  
electric or mag-  
netic telegraphs

38. Whosoever shall unlawfully and maliciously, by any overt act, attempt to commit any of the offences in the last preceding section mentioned, shall, on conviction thereof before a Justice of the Peace, at the discretion of the Justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay such sum of money not exceeding Ten pounds as to the Justice shall seem meet.

Attempt to injure  
such telegraphs