

Approved for Reprint 21st June, 1977.

WESTERN AUSTRALIA.

TRANSPORT COMMISSION.

No. 53 of 1966¹

[As amended by Acts:—

No. 6 of 1968, assented to 26th September, 1968;
No. 64 of 1970,² assented to 17th November, 1970;
No. 58 of 1972, assented to 31st October, 1972;
No. 94 of 1972³ (as amended by No. 83 of 1973⁴);
No. 51 of 1975, assented to 18th September, 1975;
No. 24 of 1976,⁵ assented to 9th June, 1976;
No. 79 of 1976,⁶ assented to 18th October, 1976;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to establish a Commission to control and license the transport of passengers and goods by Road and by Air and to control the operation of ships engaged in the coasting trade and for incidental and other purposes.

Long Title.
Amended
by No. 64 of
1970, s. 3.

[Assented to 5th December, 1966.]

BE it enacted—

PART I—PRELIMINARY.

1. This Act may be cited as the *Transport Commission Act, 1966-1976*.

Short Title.
Amended by
No. 79 of
1976, s. 1.

2. This Act shall come into operation on the date on which the State Transport Co-ordination Act, 1966, comes into operation.¹

Commence-
ment.

The sectional references in the marginal notes of this Act are a reference to sections of the State Transport Co-ordination Act, 1933.

¹ Came into operation on 19/6/67. See *Gazette* 9/6/67, p. 1547.

² Royal approval given and Act proclaimed to come into operation on 8/8/71. See *Gazette* 16/7/71, p. 2557-8.

³ Metric Conversion Act, 1972. Relevant amendments included in this reprint effective from 1/7/73; see *Gazette* 4/5/73, p. 1110.

⁴ Metric Conversion Act Amendment. Relevant amendments effective from 7/3/74; see *Gazette* 7/3/74, p. 762.

⁵ Came into operation on 1st February, 1977; see *Gazette* 24/12/76, p. 5028.

⁶ Sections 1, 2, 3, 4 and 7 to operate from assent. Sections 5 and 6 to operate from proclamation of Act No. 24 of 1976, i.e. 1/2/77.

Parts and
Divisions.
[S. 2.]
Amended by
No. 64 of
1970, s. 4.

3. This Act shall be divided into Parts and Divisions, as follows:—

PART I.—PRELIMINARY.—Ss. 1-6.

PART II.—ADMINISTRATION.—Ss. 7-18.

*Division 1.—Commissioner of Transport—
Constitution—Officers.—Ss. 7-15A.*

*Division 2.—Powers of Commissioner of
Transport.—Ss. 16-18.*

PART III.—LICENCES.—Ss. 19-47F.

*Division 1—General Provisions relating to
Licensing of Public Vehicles.—Ss. 19-23.*

Division 2—Omnibuses.—Ss. 24-32.

*Division 3—Commercial Goods Vehicles.—
Ss. 33-42.*

Division 4—Aircraft.—Ss. 43-47.

Division 5—Ships.—Ss. 47A-47F.

PART IV.—MISCELLANEOUS.—Ss. 48-63.

Interpre-
tation.
[S. 3.]
Amended by
No. 94 of
1972, s. 4;
No. 51 of
1975, s. 4.

4. (1) In this Act, unless the contrary intention appears,—

“commercial goods vehicle” means a vehicle, other than a vehicle propelled by animal or human power, only, operating or used or intended to be used, on roads or streets for the transport of goods and includes any such vehicle so used or operated or used or intended to be used by or on behalf of the Crown for the carriage of goods for hire or reward and whether in connection with a railway or not;

“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;

“goods” means chattels of every description;

“gross weight”, in relation to a commercial goods vehicle, means the sum of the unladen weight of the vehicle and the load that it is authorised, by its licence under this Act, to carry;

“licence” means a licence or permit issued under this Act and for the time being in force, and the verb “to license” has a corresponding meaning;

“local authority” means the council of a municipality constituted under the Local Government Act, 1960;

“officer” means an officer, clerk, servant, or other person in the employ of the Commissioner, and includes a member of the Police Force or of the staff of the Road Traffic Authority, or any other person acting in pursuance of powers or duties conferred upon him by or under this Act, and any person utilised by the Commissioner pursuant to section fifteen, or any other provision of this Act;

“omnibus” means a motor vehicle used or intended to be used as a passenger vehicle to carry passengers for hire or reward, and includes any such vehicle so used or intended to be used by or on behalf of the Crown, or an agency of the Crown other than the Metropolitan (Perth) Passenger Transport Trust, and whether in connection with a railway or not, but does not include a vehicle licensed for use as a taxi-car under the Taxi-cars (Co-ordination and Control) Act, 1963, or the Road Traffic Act, 1974;

“operate”, as applied to a vehicle, means to carry, or offer to carry, passengers or goods for hire or for any consideration, or in the course of or in connection with any trade or business whatever;

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“owner”, in relation to a vehicle, includes every person who—

- (a) is the owner or a co-owner of the vehicle; or
- (b) has the use of the vehicle under a hiring, lease or hire-purchase agreement,

but does not include an unpaid vendor of the vehicle under a hire-purchase agreement;

“permit” means a permit issued under this Act and for the time being in force;

“public vehicle” means any vehicle that is required to be licensed under this Act;

“road” includes any street or place open to or used by the public, and all bridges and culverts and other things appurtenant thereto and used in connection therewith;

“railway” means a railway within the meaning of the Government Railways Act, 1904;

“Schedule” means a schedule to this Act;

“section” means a section of this Act;

“vehicle” means a vehicle propelled by any means, other than animal or human power, and includes an aircraft, but does not include a vehicle used on a railway.

(2) For the purposes of this Act, a trailer and a semi-trailer is a vehicle separate from, and is deemed to be driven by the driver, of, the vehicle by which it is drawn.

Act to be
read subject
to Common-
wealth
Constitu-
tion.
S. 4.

5. This Act shall be construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that, where any provision hereof would, but for this section, be construed as being

in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

6. (1) All the right, title and interest of the Commissioner of Transport constituted under the State Transport Co-ordination Act, 1933, existing immediately prior to the coming into operation of this Act, in and to all property owned by that Commissioner shall, by force of this section, be transferred to and vested in the Commissioner, under this Act. Transition.
S. 4A.

(2) Subject to this Act, all rights, obligations and liabilities of the Commissioner of Transport, under the State Transport Co-ordination Act, 1933, existing immediately prior to the commencement of this Act, 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 this Act shall be read as a reference to the Commissioner, constituted under this Act.

(3) Any right of action or power of prosecution had by or against the Commissioner of Transport, under the State Transport Co-ordination Act, 1933, shall continue to be had by and may be enforced by or against the Commissioner.

PART II.—ADMINISTRATION.

Division 1.—Commissioner of Transport—Constitution— Officers.

7. (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 nine. Commis-
sioner of
Transport.
S. 4B.

(2) Subject to this Act and to the general control of the Minister, the Commissioner is responsible for the administration of this Act.

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(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, giving security over 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.

Deputy
Commissioner.
S. 4C.

8. (1) The Commissioner shall be assisted by a Deputy Commissioner of Transport who shall be appointed and hold office as provided in section nine.

(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.

Appointment
of Com-
missioner
and Deputy
Commis-
sioner, term
and con-
ditions of
appoint-
ment.
S. 4D.

9. (1) The Commissioner and Deputy Commissioner—

- (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) shall 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 purpose 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.

(3) Notwithstanding the foregoing provisions of this section, the persons who, on the coming into operation of this Act, hold office, respectively, as Commissioner of Transport and as Deputy Commissioner of Transport, under the State Transport Co-ordination Act, 1933, are, by force of this subsection, appointed to the respective offices of Commissioner and Deputy Commissioner under this Act, and each shall hold office for the portion of the term for which he was so appointed under the State Transport Co-ordination Act, 1933, that is unexpired on the coming into operation of this Act.

10. 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,

Vacation of office of Commissioner or Deputy Commissioner.
S. 4E.

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.
S. 4F.

11. 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.

Deputy Commissioner to act for Commissioner in certain cases.
S. 4G.

12. 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.

Leave of absence.
S. 4H.

13. 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.

Annual report.
S. 5(2).

14. (1) As soon as may be after the thirtieth day of June in each year, the Commissioner shall cause a report to be prepared containing—

- (a) a statement relating to the proceedings and work of the Commissioner, during the financial year then last preceding; and
- (b) any comments that the Commissioner thinks desirable to make, relating to the administration or operation of this Act.

(2) The annual report of the Commissioner shall be laid before both Houses of Parliament not later than the fourteenth day of November in each year, if Parliament is then sitting, otherwise within the six sitting days of each House next following that month.

15. (1) The Governor may appoint a secretary to the Commissioner, and any other officers and servants of the Commissioner necessary for the carrying out of the provisions of this Act.

Secretary
and officers
of Com-
mission.
S. 9.

(2) Any person so appointed may, if required by the terms of his appointment to give the whole of his time to the service of the Commissioner, be appointed under and be subject to the Public Service Act, 1904.

(3) The Commissioner may, with the consent of the Minister administering any department of the public service, or the Main Roads Act, 1930, make use of the services of any person employed in that department, or under the provisions of that Act, for the purpose of carrying out the provisions of this Act.

15A. (1) The Commissioner shall have power to borrow money upon the guarantee of the Treasurer of the State for the purposes of carrying out his powers and functions under this Act, including the provision of premises and other facilities.

Power to
borrow
money.
Added by
No. 51 of
1975, s. 3.

(2) The Commissioner is authorized with the prior approval in writing of the Treasurer to borrow money upon such terms and conditions only as the Treasurer approves.

(3) The Treasurer is hereby authorized to so approve and to give the guarantee, including the guarantee of interest, in subsection (1) of this section, for and on behalf of the Crown in right of the State.

(4) Any moneys borrowed by the Commissioner under this section may be raised as one loan or as several loans and in such manner as the Treasurer may approve, but the amount of the moneys so borrowed shall not in any one year exceed in the aggregate such amount as the Treasurer approves.

(5) Before a guarantee is given by the Treasurer under this section, the Commissioner shall give to the Treasurer such security as the Treasurer may require and shall execute all such instruments as may be necessary for the purpose.

(6) The Commissioner shall use all moneys borrowed under the power conferred by this section for the purposes of carrying this Act into effect.

Division 2.—Powers and Duties of the Commissioner.

Powers and
authorities.
S. 10.

16. (1) The Commissioner, under the direction of the Minister, shall—

- (a) call tenders for the provision of road transport, with or without inviting premiums or offering subsidies, where, in the opinion of the Minister, the requirements of a district are not adequately served by any form of transport; and
- (b) administer and direct the payment of such subsidies with respect to the provision of transport as may be authorised pursuant to this Act.

(2) The Commissioner shall consider and determine all applications for licences 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 licence; and
- (b) determine in respect of any particular licence or group of licences the conditions that shall be imposed on the granting and holding of the licence or licences.

Conditions
of tender.
S. 12.

17. (1) The Commissioner may, in calling tenders under section sixteen, call them subject to any one or more of the conditions, as he thinks fit,

to be imposed as a condition or as conditions precedent, that the tenderer will, if his tender is accepted,—

- (a) provide a minimum service, as specified by the Commissioner;
- (b) provide the minimum service for a minimum period, as specified by the Commissioner;
- (c) execute jointly and severally, with sureties of a number and kind to be approved by the Commissioner, a bond in favour of the Commissioner, binding the tenderer and his sureties to the Commissioner in an amount to be specified by the Commissioner for the due performance of any condition imposed by the Commissioner.

(2) The imposition, by the Commissioner, of conditions on a licence pursuant to this section does not preclude his imposition of conditions on the licence pursuant to section sixteen.

(3) Where a tenderer who has been granted a licence subject to conditions, including the execution of a bond, imposed under the authority of this section, and thereafter fails, in any respect, duly to perform any one of the conditions, then, without prejudice to the right or power of the Commissioner under this Act to cancel the licence granted to the tenderer, the Commissioner may take any proceedings at law or in equity in any court of competent jurisdiction to enforce payment under the bond against all or any of the persons thereby bound.

18. (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, or any other, Act, except this power of delegation, so that the delegated powers

Delegation.
S. 10A.

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.

PART III.—LICENCES.

Division 1.—General Provisions relating to Licensing of Public Vehicles.

Application
of Part.
Ss. 14A and
15 (4).

19. (1) Notwithstanding the provisions of any other Act, but subject to subsection (2) of this section, this Part applies to all vehicles operated including vehicles operated by the Crown, or by an agency of the Crown, in right of the State, other than such as are operated under the Metropolitan (Perth) Passenger Transport Trust Act, 1957.

(2) The Minister may, by notice published in the *Government Gazette*, exempt any vehicle or class of vehicles or any part of the State from the provisions of this Part, subject to any conditions that may be set out in the notice.

Vehicles
operating to
be licensed.
S. 14.

20. (1) Every vehicle that is operated after the coming into operation of this Act is required to be licensed under this Part.

(2) This section does not apply to any journey made for reward by a motor vehicle, that is not a commercial goods vehicle or omnibus, on any occasion with respect to which the Commissioner is satisfied that a special emergency justified the making of the journey.

(3) A vehicle that, on the date of the coming into operation of this Act is licensed pursuant to the State Transport Co-ordination Act, 1933, is deemed to be licensed pursuant to this Part, and the licence or permit is valid for the period that is unexpired on that date.

21. (1) The following fees are payable, in the prescribed manner, to the Commissioner, in respect of every public vehicle licence, namely,—

Fees for licences.
Second Schedule.
[S. 15.]
Amended by
No. 6 of
1968, s. 22;
No. 94 of
1972, s. 4;
No. 51 of
1975, s. 4.

(a) for an omnibus licence under Division 2 of this Part, a fee determined by the Commissioner and—

(i) based on, but not exceeding six per centum of, the gross earnings derived from the operation of the vehicle assessed in such manner as may be prescribed; or

(ii) based on, but not exceeding ten dollars per annum for each unit of, the maximum number of passengers that the vehicle is licensed to carry at any one time,

whichever basis is, in the opinion of the Commissioner, the more appropriate;

(aa) for an aircraft licence under Division 4 of this Part, a fee determined by the Commissioner and—

(i) based on, but not exceeding six per centum of, the gross earnings of the vehicle assessed in such manner as may be prescribed; or

(ii) based on, but not exceeding twenty cents per annum for each kilogram of, the maximum permissible take-off weight specified in the Certificate of Airworthiness issued in respect of the vehicle under the Air Navigation Regulations of the Commonwealth,

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whichever basis is, in the opinion of the Commissioner, the more appropriate;

- (b) for a commercial goods vehicle, other than a trailer or semi-trailer, a fee, not exceeding a fee calculated at the rate of two dollars per fifty kilograms of the gross weight of the vehicle, determined by the Commissioner; and
- (c) for a trailer or semi-trailer, a fee, not exceeding the appropriate fee provided by the Second Schedule, determined by the Commissioner.

(2) The Commissioner may at any time vary the fee determined by him for any licence.

(3) The Commissioner may refund the whole or any part of any licence fee paid in respect of any commercial goods vehicle, where the vehicle has not been operated in the manner or to the extent contemplated when the licence was issued.

(4) In assessing a licence fee based on the gross earnings derived from the operation of a vehicle, the Commissioner shall not take into account the amount of any subsidy paid or payable in respect of its operation.

Weighing
of public
vehicle or
goods.
S. 19.

22. (1) Subject to this Act and to any regulations made under subsection (2) of this section, the weight of a public vehicle or of goods carried or to be carried by a commercial goods vehicle shall, if the Commissioner so orders, be determined at a weighbridge, or by means of such other mechanical device as may be approved by the Commissioner, and proof of the weight so determined shall be produced by the holder of, or an applicant for, a licence for the vehicle to the Commissioner or to any officer of the Commissioner, on demand.

(2) The regulations may provide that the method of ascertainment of the weight of the vehicle or of any goods carried by the vehicle for the purposes of any other Act be adopted for the purposes of this Act.

23. (1) The Commissioner may on payment of the prescribed fee by the person who has become the owner of the vehicle, grant a transfer of a licence of a public vehicle, and that person shall, thereupon, become the licensee.

Transfer of licence.
S. 20.

(2) An application for transfer may be refused for any reason for which an application for a licence by the same person for the same, or any, public vehicle might have been refused.

Division 2.—Omnibuses.

24. (1) Subject to this Division, the Commissioner may, on the application of the owner, grant a licence in respect of an omnibus.

Licences for omnibuses.
Ss. 21 and 22.

(2) A licence is not required under this Division where—

(a) a number of persons, on any special occasion, join in a common enterprise, to bear the expense of a journey undertaken for pleasure, in a privately owned motor vehicle; and

(b) the journey has, as its destination, a place to which, on the day of the journey there was no service that might have been used.

25. Every application for an omnibus licence shall be in writing, setting out—

Applications for licences.
S. 23.

(a) the routes on which or the area in which it is intended that the omnibus is to operate;

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- (b) a description of the vehicle in respect of which the application is made;
- (c) the maximum number of passengers to be carried at any one time by the vehicle;
- (d) the service proposed to be provided;
- (e) the fares proposed to be charged; and
- (f) such other particulars as may be prescribed.

Matters to be taken into consideration by Commissioner before grant or refusal of licence.
S. 24.

26. Before granting or refusing a licence for an omnibus, the Commissioner shall take into consideration—

- (a) the necessity for the service proposed to be provided and the convenience that would be afforded to the public by the provision of the proposed service;
- (b) the existing service for the conveyance of passengers upon the routes, or within the area, proposed to be served in relation to—
 - (i) its present adequacy and possibilities for improvement to meet all reasonable public demands; and
 - (ii) the effect upon the existing service of the service proposed to be provided;
- (c) the condition of the roads to be included in any proposed route or area; and
- (d) the character, qualifications and financial stability of the applicant.

Power to grant, etc., applications.
Ss. 25 and 31.

27. (1) Subject to the provisions of this Division, the Commissioner may (with or without variation) grant, or may refuse, the application.

(2) The Commissioner may—

- (a) appoint stopping places at which passengers may be picked up or set down; and
- (b) direct that passengers be not picked up or set down, other than at a stopping place, or stopping places so appointed,

on any route or a section of the route, for which he has granted a omnibus licence.

(3) Notwithstanding the provisions of any other Act, the Commissioner may erect or cause to be erected at a stopping place appointed pursuant to subsection (2) of this section—

- (a) any sign indicating and identifying the stopping place; and
- (b) shelters of a design and construction approved by the Minister;

but, before erecting, or causing the erection of any sign or shelter authorised by this subsection, the Commissioner shall confer with the local authority concerned and, if agreement cannot be reached on the location, size and type of any sign or shelter the matter in dispute shall be determined by the Minister and the Minister for the time being administering the Local Government Act, 1960, or the Main Roads Act, 1930, as the case may require.

(4) A local authority shall, if so required by the Commissioner, appoint within its district such stands for omnibuses as may be mutually agreed by the Commissioner and the local authority and, in the event of their failure to reach agreement, the matter shall be resolved in the manner provided by subsection (3) of this section for the resolving of matters in dispute.

(5) In this section, the term “local authority” includes the Commissioner of Main Roads, where the section applies to any part of the Metropolitan Traffic Area, within the meaning of the Road Traffic Act, 1974.

Conditions
of omnibus
licences.
S. 26.

28. It is an implied condition of every licence for an omnibus granted by the Commissioner that—

- (a) the vehicle be maintained in a fit and serviceable condition;
- (b) the provisions of any Act or regulation applicable to the vehicle and its operation be complied with;
- (c) the requirements of the Motor Vehicle (Third Party Insurance) Act, 1943, relating to insurance be complied with in relation to the vehicle;
- (d) the provisions and the requirements of any relevant industrial award or agreement applying to persons engaged in the operation of the vehicle be complied with; and
- (e) a direction of the Commissioner regulating the use of places for the picking up and setting down of passengers be complied with.

Power to
Commissioner
to attach
conditions
to licences.
S. 27.

29. (1) The Commissioner may, in his discretion, attach to any omnibus licence all or any of the following conditions, namely, a condition that—

- (a) the vehicle operate only upon a specified route or in a specified area;
- (b) not more than a specified number of passengers to be carried at any one time on the vehicle;
- (c) specified time tables be observed;
- (d) specified fares be charged;
- (e) prescribed records and statistics be kept and supplied to the Commissioner;

and may attach such other conditions as he thinks proper to impose, in the public interest.

(2) The Commissioner may add to, vary, or cancel any of the conditions attached, pursuant to the provisions of subsection (1) of this section, to an omnibus licence.

30. (1) A licence for an omnibus may be granted for a period of not more than seven years, but the provisions of this section do not affect the power of the Commissioner to grant a licence for a particular purpose of limited duration.

Power to grant omnibus licences for period of seven years.
S. 29.

(2) A transfer of a licence for an omnibus shall not be granted, unless and until the Commissioner is satisfied that no money or other consideration by way of premium or otherwise is to be paid or given for the transfer of the portion of the term of the licence that is unexpired.

31. The Commissioner, or a person authorised in that behalf by the Commissioner in writing (whether generally or in any particular case), may grant to the owner of an omnibus licensed under this Part, a permit authorising the vehicle to operate, subject to such conditions as may be imposed by the Commissioner,—

Permits.
S. 30.

- (a) on any temporary deviation from the routes specified in the licence; or
- (b) temporarily on any route or in any area not specified in the licence.

32. A licence shall not be granted for an omnibus under this Part unless the vehicle is licensed in accordance with the Road Traffic Act, 1974.

Omnibuses to be registered as motor vehicles.
[S. 32.]
Amended by No. 64 of 1970, s. 5.

Division 3.—Commercial Goods Vehicles.

33. (1) Subject to this Division, the Commissioner may, on the application of the owner, grant a licence in respect of a commercial goods vehicle.

Application of Part.
[Ss. 34 and 35.]
Amended by No. 94 of 1972, s. 4.

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(2) A licence is not required under this Part in respect of any commercial goods vehicle that—

- (a) is operated solely in the area within thirty-five kilometres of the General Post Office, Perth;
- (b) is operated solely within thirty-five kilometres of the place of business of the owner; or
- (c) is being used otherwise than on a road.

(3) For the purposes of paragraphs (a) and (b) of subsection (2) of this section, where goods are carried in stages, from one place to another, by different vehicles, the whole journey over which the goods are carried is deemed to be one journey and every vehicle taking part in the carriage of the goods is deemed to have made the whole journey.

(4) A licence is not required for a commercial goods vehicle that is being used solely for any carriage specified in the First Schedule, except where—

- (a) more than three persons are co-owners of the vehicle and—
 - (i) the interest of any one of them in the vehicle is not that of a partner in partnership with the other co-owners or, if that of a partner, is that only of a partner in a limited partnership (within the meaning of the Limited Partnerships Act, 1909) with the other co-owners; or
 - (ii) one of them is not an owner of the business in respect of which the vehicle is operated or is not a partner of, or, being a partner, is only a limited partner of, a firm owning that business;

or

- (b) two or more persons are co-owners of the vehicle and the vehicle is operated, or intended to be operated, or is available for

operation, for the direct benefit of one of them, to the exclusion of the other or others of them.

(5) The burden of proving that a commercial goods vehicle is exempted from the provisions of this Part under subsection (4) of this section, and that a licence in respect of that vehicle is not required thereunder lies upon the person claiming the exemption.

34. (1) Where an application is made for a licence to operate a commercial goods vehicle wholly within sixty kilometres of the General Post Office, Perth, the Commissioner shall, notwithstanding the discretion exercisable by him under section thirty-seven, grant the licence.

Licences to operate commercial goods vehicles within 60 kilometres of the General Post Office, Perth.
[S. 35A.]
Amended by No. 94 of 1972, s. 4.

(2) The provisions of this Part, other than those of sections thirty-six, thirty-seven and thirty-nine, apply to a licence granted by the Commissioner under this section and to an application for such a licence.

35. (1) Every application for a commercial goods vehicle licence shall be in writing, setting out—

Application for licence.
[S. 36.]
Amended by No. 51 of 1975, s. 5.

- (a) the route on which or the area in which it is intended that the commercial goods vehicle is to operate;
- (b) a description of the vehicle in respect of which the application is made;
- (c) the classes of goods proposed to be carried; and
- (d) such other particulars as may be prescribed.

(2) Where the application relates to a licence required for a particular purpose of limited duration, notwithstanding the provisions of subsection (1) of this section the Commissioner may grant the licence without prior lodgement of the written

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application where he is satisfied that sufficient information has been made available to him to enable him so to do.

(3) A licence granted pursuant to subsection (2) of this section—

- (a) shall be deemed to take effect upon verbal notification to the applicant that a licence will issue; but
- (b) shall be deemed not to have taken effect if the written application relating thereto is not received by the Commissioner within seven days of the Commissioner's decision or if the information contained in the written application differs in a material particular from the information made available to the Commissioner prior to his decision.

Matters to be taken into consideration by the Commissioner before grant or refusal of licence.
S. 37.

36. Before granting or refusing a licence for a commercial goods vehicle, the Commissioner shall take into consideration—

- (a) the necessity for the service proposed to be provided and the convenience that would be afforded to the public by the provision of the proposed service;
- (b) the existing service for the carriage of goods upon the routes, or within the area, proposed to be served in relation to—
 - (i) its present adequacy and possibilities for improvement to meet all reasonable public demands; and
 - (ii) the effect upon the existing service of the service proposed to be provided;
- (c) the condition of the roads to be included in any proposed route or area; and
- (d) the character, qualifications, and financial stability of the applicant.

37. Subject to the provisions of this Division, the Commissioner may (with or without variation) grant, or may refuse an application for a commercial goods vehicle licence.

Power of Commissioner to grant or refuse application for licence.
S. 38.

38. It is an implied condition of every licence for a commercial goods vehicle granted by the Commissioner—

Conditions of commercial goods vehicle licence.
S. 39.

- (a) that the vehicle be maintained in a fit and serviceable condition;
- (b) that the provisions of any Act or regulation applicable to the vehicle and its operation be complied with;
- (c) that, in relation to the vehicle, the provisions of section forty-eight, relating to the limitation of hours of driving, be observed, and that the provisions and the requirements of any relevant industrial award or agreement applying to any persons engaged in its operation be complied with; and
- (d) that the vehicle carry no load exceeding that stipulated in, and authorised by, the licence.

39. (1) The Commissioner may, in his discretion, attach to any commercial goods vehicle licence all or any of the following conditions, namely a condition that—

Power of Commissioner to attach conditions to licence.
S. 40.

- (a) the vehicle operate only upon specified routes or in a specified area; and
- (b) prescribed records be kept;

and may attach such other conditions as he thinks proper to impose, in the public interest.

(2) The Commissioner may add to, vary or cancel any of the conditions attached, pursuant to the provisions of subsection (1) of this section, to a commercial goods vehicle licence.

Period of
licence.
S. 42.

40. The Commissioner may grant a licence for a commercial goods vehicle,—

- (a) for a period of one year; or
- (b) for a particular purpose of limited duration.

Permits.
S. 43.

41. The Commissioner, or a person authorised in that behalf by the Commissioner, in writing (whether generally or in any particular case), may grant to the owner of any commercial goods vehicle licensed under this Division a permit authorising the vehicle to operate subject to such conditions as may be imposed by the Commissioner—

- (a) on any deviation from the routes specified in the licence; or
- (b) temporarily, on any route or in any area not specified in the licence.

Commercial
goods
vehicles to
be registered
as motor
vehicles.
S. 44.

42. A licence shall not be granted for any commercial goods vehicle under this Division unless the vehicle is licensed for its class, under the Road Traffic Act, 1974.

Division 4.—Aircraft.

Licences
for air-
craft.
Ss. 45 and
46.

43. (1) Subject to this Division, the Commissioner may, on the application of the owner, grant a licence in respect of an aircraft.

(2) A licence is not required under this Part in respect of an aircraft used for the purpose only of transporting—

- (a) a legally qualified medical practitioner in the course of his professional duties; or
- (b) a sick or injured person to or from medical aid, in a case of emergency.

(3) The Commissioner shall not grant a licence in respect of an aircraft, unless he is satisfied that all laws of the Commonwealth relating to the

aircraft and its operation have been, and will at all times be, complied with; but, subject thereto, he may (with or without variation) grant or may refuse a licence.

(4) Every licence granted shall, subject to the conditions of the licence, authorise the operation of the aircraft between the points or in any areas specified in the licence.

44. Every application for an aircraft licence shall be in writing, setting out—

Applica-
tions for
licences.
S. 47.

- (a) the routes on which and the area in which it is intended that the aircraft is to operate;
- (b) a description of the aircraft in respect of which the application is made;
- (c) the maximum number of passengers to be carried at any one time, and the classes of goods to be carried, by the aircraft;
- (d) the service proposed to be provided;
- (e) the fares and freight rates proposed to be charged; and
- (f) such other particulars as may be prescribed.

45. Before granting, or refusing, a licence for an aircraft, the Commissioner shall take into consideration—

Matters to
be taken
into con-
sideration
by Com-
missioner
before grant
or refusal
of licence.
S. 47.

- (a) the necessity for the service proposed to be provided and the convenience that would be afforded to the public by the provision of the proposed service;
- (b) the existing service for the conveyance of passengers or goods upon the routes, or within the area, proposed to be served, in relation to—
 - (i) its present adequacy and possibilities for improvement to meet all reasonable public demands; and

Transport Commission.

- (ii) the effect upon the existing service of the service proposed to be provided;
- (c) the condition of the airports and landing grounds to be included in any proposed route or area; and
- (d) the character, qualifications and financial stability of the applicant.

Conditions
of aircraft
licences.
S. 47.

46. It is an implied condition of every licence for an aircraft granted by the Commissioner that—

- (a) the provisions of any law applicable to the aircraft and its operation be complied with;
- (b) the provisions and requirements of any industrial award or agreement applying to persons engaged in the operation or servicing of the aircraft be complied with; and
- (c) any direction of the Commissioner relating to the use of airports or landing grounds be complied with.

Power of
Commis-
sioner
to attach
conditions
to licences.
[S. 47.]
Amended by
No. 79 of
1976, s. 3.

47. (1) The Commissioner may, in his discretion, attach to an aircraft licence all or any of the following conditions, namely, a condition that—

- (a) the aircraft be operated only upon specified routes or in a specified area;
- (b) specified timetables be observed;
- (c) specified fares and freight rates be charged; and
- (d) prescribed records and statistics be kept and be supplied to the Commissioner,

and may attach such other conditions as he thinks fit to impose, in the public interest.

(2) The Commissioner may add to, vary or cancel any of the conditions attached, pursuant to the provisions of subsection (1) of this section, to an aircraft licence.

Division 5.—Ships.

47A. (1) In this Division, unless the contrary intention appears—

Interpreta-
tion.
Added by
No. 64 of
1970, s. 6.

“master” in relation to a ship means the person having command or charge of the ship but does not include the pilot thereof;

“port” includes place and harbour;

“ship” means any vessel of a registered tonnage of not less than eighty tons that is used in sea navigation and includes barge, lighter or other floating vessel.

(2) A ship shall be deemed to be engaged in the coasting trade, within the meaning of this Division, if the ship takes on board cargo at any port in the State to be carried to, and delivered at, any other port in the State.

(3) For the purposes of this Division, each ship operated by or on behalf of the Western Australian Coastal Shipping Commission established under the Western Australian Coastal Shipping Commission Act, 1965, shall while it is so operated, be deemed to be authorized under this Division to engage in the coasting trade and no licence or permit is required thereunder for such a ship while it is being so operated.

(4) The Minister may, by notice published in the *Government Gazette*, declare that the provisions of this Division shall not apply to—

(a) any ship or class of ship; or

(b) any cargo or class of cargo.

subject to any conditions that may be set out in the notice, and while a ship is being operated or a cargo is carried under the authority of a notice published under this subsection no licence or permit is required under this Division.

Authority for ships to engage in coasting trade. Added by No. 64 of 1970, s. 7. Amended by No. 94 of 1972, s. 4 (as amended by No. 83 of 1973).

47B. (1) Subject to this Division, a ship shall not engage in the coasting trade unless it is authorized to do so pursuant to a licence or permit granted under this Division.

(2) The master, owner, charterer or agent of a ship that—

- (a) engages in the coasting trade without the ship being so authorized; or
- (b) engages in the coasting trade contrary to the licence or permit authorizing it to engage in the coasting trade,

commits an offence against this Act.

Penalty: One thousand dollars.

(3) An application for a licence or permit for a ship to engage in the coasting trade may be made to the Commissioner in the prescribed form by the master, owner, charterer or agent of the ship.

(4) (a) The application shall specify—

- (i) the name, port of registry and official number of the ship;
- (ii) the name of its registered owner and master;
- (iii) the ports in the State between which it is desired to trade;
- (iv) whether the licence or permit to which the application relates is desired for the carriage of cargo only or both cargo and passengers and the kind and amount of cargo intended to be carried; and
- (v) such other particulars as may be prescribed;

(b) Where an application is for a permit, the application shall also specify the voyage for which the permit is desired.

(5) Where a licence has been granted under this Division in respect of a ship, the master, owner, charterer or agent thereof may, from time to time, make application to the Commissioner in the prescribed form for a renewal of the licence and the application shall be made not less than thirty days before the expiration of the period for which the licence was granted or renewed.

(6) A licence or a renewal of a licence may be granted by the Commissioner for such period not exceeding three years as the Commissioner determines and specifies in the licence except where in relation to any particular licence or particular renewal of a licence, the Minister by instrument in writing directs that the licence or the renewal shall be granted for such period in excess of three years as the Minister specifies in the instrument.

(7) A permit may be granted by the Commissioner in respect of a single voyage only and between such two or more ports in the State as are specified in the permit.

(8) There shall be paid, in the prescribed manner, to the Commissioner, in respect of every licence or permit under this Division, a fee determined by the Commissioner but not exceeding—

- (a) in the case of a licence, or the renewal of a licence, an amount of fifty dollars for each month or part thereof of the term of the licence or renewal; and
- (b) in the case of a permit, an amount calculated at the rate of five cents per tonne of cargo carried on the voyage to which the permit relates,

with a minimum fee of five dollars per permit.

Granting
of licences
and permits
in certain
cases.
Added by
No. 64 of
1970, s. 8.

- 47C. (1) The Commissioner shall grant—
- (a) a licence or permit under this Division for a ship, if he is satisfied that—
 - (i) the cargo to be carried by the ship in the course of the coasting trade to which the licence or permit will relate, and which is specified in the application for the licence or permit, is cargo of such a kind that none of the ships that are deemed to be authorized to engage in the coasting trade under this Division is technically suited to carry; or
 - (ii) the Commission that controls the ships so authorized does not wish any of the ships to carry the cargo; or
 - (iii) the cargo to be carried by the ship in the course of the coasting trade to which the licence or permit will relate and which is specified in the application for the licence or permit is cargo of such a kind that requires for the purpose of its loading onto, carriage in, or unloading from, the ship, specialised equipment that is in operation in the State for the purpose on the commencement of this section.
 - (b) a permit under this Division for a ship, if he is satisfied that—
 - (i) the cargo specified in the application for the permit is required for a purpose or operation that must be completed, continued or carried out without interruption;
 - (ii) in order to prevent the interruption the cargo is required to be carried to a port so specified by a particular date or as near thereto as is practicable;

- (iii) the ship to which the application relates will be able to so carry the cargo; and
- (iv) none of the ships that are deemed to be authorized to engage in the coasting trade is available at the relevant time to so carry the cargo, or the Commission that controls the ships so authorized does not wish to arrange for the cargo to be so carried to that port.

(2) The Commissioner shall grant a licence or permit under this Division to engage in the coasting trade in any other case if, after considering the application and having regard to—

- (a) the extent to which the granting of the licence or permit is necessary or desirable in the public interest;
- (b) the needs of the port or ports specified in the application and the district in which they are situate in relation to the existing authorized coasting trade; and
- (c) the necessity, in the public interest, of protecting the public funds in operating ships deemed to be authorized to carry on the coasting trade, when the application is for a licence or permit to engage in the coasting trade in respect of a port or ports at which such ships call,

he is of opinion that it is necessary or desirable to grant the licence or permit.

47D. (1) For the purpose of ascertaining whether the provisions of this Division or any regulation relating thereto are being contravened, any person authorized for the purpose by the Commissioner by instrument in writing and whether so

Supervision.
Added by
No. 64 of
1970, s. 9.

Transport Commission.

authorized generally or in any particular case, may go on board any ship and may request the person in charge or apparently in charge of the ship—

- (a) to produce for inspection any licence or permit, if any, granted under this Division in respect of the ship, the manifest of the ship and any other document that the person so authorized requires to inspect for the purpose;
- (b) to permit an inspection of the ship and the cargo loaded or being loaded into the ship; and
- (c) to state his name and address.

(2) A person who goes on board a ship pursuant to this section—

- (a) may be accompanied and assisted by an interpreter where the records of the ship are kept in a language other than English; and
- (b) may cause any licence, permit, manifest of the ship or other document inspected by him pursuant to this section, to be copied.

(3) A person who—

- (a) fails to produce the licence, permit, manifest of a ship or other document or does not allow any of them to be copied;
- (b) refuses to permit an inspection of a ship or its cargo;
- (c) refuses to state his name and address;
- (d) refuses to allow any person to go on board a ship who is authorized to do so under this Act,

after being requested so to do pursuant to this section, commits an offence against this Act.

Penalty: Three hundred dollars.

47E. A prosecution for an offence against this Act may be brought at any time.

No limitation from proceedings.

Added by No. 64 of 1970, s. 10. "This Act" includes regulations. Vide s. 4 Act No. 30 of 1918.

47F. This Division shall be read and construed as being in addition to and not in derogation of or in substitution for any of the provisions of the Western Australian Marine Act, 1948.

Construction of this Division. Added by No. 64 of 1970, s. 11.

PART IV.—MISCELLANEOUS.

48. (1) A person shall not drive, or cause or permit any person employed by or under any contractual engagement with him, or subject to his orders, to drive a commercial goods vehicle that is required to be licensed pursuant to this Act—

Limitation of time for which drivers of certain motor vehicles may remain continuously on duty. S. 48.

- (a) for an unbroken period exceeding five and one-half hours;
- (b) during any period of twenty-four hours commencing at midnight, for periods exceeding, in the aggregate, eleven hours; or
- (c) so that the driver has less than ten consecutive hours for rest, during the period of twenty-four hours calculated from the commencement of any period of driving, unless he has nine hours for rest during that period of twenty-four hours and twelve hours for rest during the next ensuing period of twenty-four hours.

(2) For the purposes of this section—

- (a) any period that does not include one-half hour during which the driver is able to rest and take refreshment is deemed to be an unbroken period; and

- (b) any time spent by the driver on work in connection with a commercial goods vehicle or its load, in the course of a journey, in any capacity other than as a passenger, is deemed to be time spent in driving.

Powers of members of Police Force and persons authorised by Commissioner for purpose of ascertaining whether provisions of Act or regulations are being contravened.
[S. 49.]
Amended by No. 64 of 1970, s. 12; No. 51 of 1975, s. 6; No. 79 of 1976, s. 4.

49. (1) For the purpose of ascertaining whether the provisions of this Act or of any regulation are being contravened, a member of the Police Force, or any person authorised in that behalf by the Commissioner, in writing (whether generally or in any particular case), may require the owner and the driver of a vehicle and any other person involved in its operation—

- (a) to produce for inspection any licence, permit, or other document that, by this Act or the regulations, is required to be obtained in respect of the vehicle or carried on the vehicle;
- (b) to state his name and place of abode;
- (c) to permit an inspection to be made of the vehicle and its load; or
- (d) to give information in respect of the load, including the identity of the person who hired the vehicle for the carriage of the load and the identity of the consignor and consignee of any of the goods which the load contains.

(2) A person who fails to produce any licence, permit or other document required to be produced pursuant to subsection (1) of this section, within twenty-four hours after being so required, or refuses to state his name and place of abode, or states a false name or place of abode, or refuses to permit an inspection to be made of the vehicle, or of its load, or refuses to give information as specified in paragraph (d) of that subsection, or gives false information, is, without affecting the consequence of any other offence that he may have committed, guilty of an offence.

(3) A person shall not—

- (a) hinder or obstruct any person in the execution of any power or duty conferred on him by this Act, or lawfully performing such power or duty;
- (b) threaten or intimidate or use improper or abusive language to any person so acting.

Penalty: One hundred dollars.

50. (1) The driver and the owner of a public vehicle that is operated and that—

- (a) is not licensed as such under this Act; or
- (b) being licensed, is carrying goods not authorised, or otherwise than authorised, by the licence;

Penalties for operating unlicensed public vehicles.
[S. 52.]
Amended by No. 51 of 1975, s. 7.

are, subject to subsection (2) of this section severally guilty of an offence.

Penalty: For a first offence, not more than one hundred dollars, for a second offence, not more than two hundred dollars and, for any subsequent offence, not more than four hundred dollars.

(2) In any prosecution against a driver under this section it is a good defence if the driver shows that he believed, on reasonable grounds, that the public vehicle was operating in accordance with a licence granted under this Act.

(3) The court by or before which a person is convicted of an offence under this section may, whether or not it imposes any other penalty, order the driver or owner of the vehicle to which the offence relates to pay to the Commissioner the amount of any licence fee that the court determines should have been paid but was not paid under this Act in respect of that vehicle.

(4) Where in any proceedings under this section the court records a finding to the effect that the defendant has satisfied the court that he was not

directly responsible for the commission of the offence, and whether or not any other person has been convicted in relation to the same matter, the defendant may recover in any court of competent jurisdiction from any person directly responsible for the commission of the offence the amount of any pecuniary penalty imposed on his conviction and paid or payable by him, together with the costs, fees, charges and other expenses paid or payable by him in relation to his defence to those proceedings, and the court may, if it thinks fit, suspend the operation of any order made under subsection (3) of this section for any period not exceeding three months to enable the defendant so to effect recovery.

Proof of person being unlicensed.
S. 50.

51. In any prosecution for an offence under this Act, an averment in the complaint that a person is, or was, the owner of a public vehicle, or is, or was, unlicensed, or that any person, is, or was, not the holder of any particular licence in respect of a public vehicle is deemed to be proved, in the absence of proof to the contrary.

Passengers or goods not to be sent by unlicensed vehicle.
S. 16.

52. A person who, knowingly, sends or causes to be sent or conveyed, or agrees or offers to send or convey, any passengers or any goods, by a public vehicle in respect of which the appropriate licence is not in force, commits an offence.

Penalty: For a first offence, not more than one hundred dollars, for a second offence, not more than two hundred dollars and, for any subsequent offence, not more than four hundred dollars.

Penalty for failure to comply with Act, etc.
S. 23.

53. The owner or driver of a public vehicle licensed under this Act who neglects or fails to comply with, or observe, any of the terms and conditions attached to or implied in the licence commits an offence.

54. A person driving or using a commercial goods vehicle that is required to be licensed under this Act shall not carry, or permit any person to ride, in or upon the vehicle, unless—

Commercial goods vehicle not to be used for passengers. S. 18.

(a) the licence granted in respect of the vehicle expressly authorises the carriage of passengers;

(b) the person so carried is—

(i) carried in the case of an emergency;

or

(ii) is carried without fee or reward of any kind;

or

(c) the owner of the vehicle is the holder of a special permit granted by the Commissioner, and the person so carried is carried in conformity with the permit.

55. Where, in any prosecution under this Act against the owner or driver of any vehicle alleged to have operated as an omnibus, the prosecution shows that passengers were carried upon the vehicle, that fact is *prima facie* evidence that the passengers were carried at separate fares.

Proof that passengers carried at separate fares. S. 53.

56. Every person guilty of an offence against this Act or against any regulation for which a penalty is not expressly provided is liable to a penalty not exceeding fifty dollars and, in the case of a continuing offence, to a further penalty not exceeding ten dollars for each day on which the offence is continued after conviction.

Provisions for offences for which no penalty expressly provided. S. 54.

56A. (1) Where a complaint is made of an offence under this Act and a summons appointing the time and place for the hearing and determina-

Affidavit evidence. Added by No. 24 of 1976, s. 3. Amended by No. 79 of 1976, s. 5.

tion of the complaint is duly served on the defendant at least twenty-eight days before that time, the summons may be accompanied by—

- (a) copies of affidavits of evidence in support of the matters alleged in the complaint; and
- (b) a notice in the prescribed form advising the defendant that he may, by election in writing in the prescribed form (copies of which form shall be attached to the notice) delivered by post or otherwise to the complainant and also to the clerk of petty sessions at the place so appointed not later than twenty-one days before the time so appointed, elect to appear or not on the hearing of the complaint but that if he does not so appear the Court may proceed—
 - (i) to hear and determine the complaint in his absence;
 - (ii) to permit those affidavits to be tendered in evidence; and
 - (iii) to determine the complaint on such particulars in the affidavits in support of the matters alleged in the complaint as would, under the laws of evidence apart from this section, be admissible if given orally before the Court, and not on any other particulars,

(which in this section and section fifty-six B of this Act is referred to as the alternative procedure).

(2) Where the defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in subsection (1) of this section and does not appear on the hearing of the complaint, whether or not he has, pursuant to that subsection, elected to do so, the Court may use the alternative procedure.

(3) Where the defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in subsection (1) of this section and elects, pursuant to that subsection, not to appear on the hearing of the complaint, or makes no election at all pursuant to that subsection, but does appear at the time and place appointed in the summons, the Court shall, on the application of the complainant, adjourn the hearing of the complaint for at least such time as is shown to the satisfaction of the Court to be necessary to enable the complainant to proceed otherwise than by the alternative procedure.

(4) For the purposes of this section an affidavit of evidence in support of the matters alleged in a complaint may be taken by, and made and sworn before, any Magistrate, Justice, or clerk of petty sessions appointed under section twenty-five A of the Justices Act, 1902, or Commissioner for taking Affidavits appointed under section one hundred and seventy-five of the Supreme Court Act, 1935.

56B. (1) Where a defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in subsection (1) of section fifty-six A of this Act and it is alleged that he has been previously convicted of an offence, the summons may also be accompanied by a copy of a separate document in the prescribed form signed by the complainant setting out particulars of the alleged prior convictions.

Proof of prior convictions when complaint proceeds on affidavit evidence. Added by No 24 of 1976, s. 3. Amended by No. 79 of 1976, s. 6.

(2) The document setting out the alleged prior convictions shall be endorsed with a notice in the prescribed form advising the defendant that if—

- (a) he does not appear on the hearing of the complaint to which the summons refers; and
- (b) he is convicted of the offence alleged in that complaint,

that separate document shall be admissible evidence that he was convicted of the offences alleged in that separate document, and of the particulars relating to the convictions set out in it.

(3) Where a defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in subsection (1) of section fifty-six A of this Act and by a copy of a separate document as mentioned in subsections (1) and (2) of this section and does not appear on the hearing of the complaint to which the summons refers and the Court uses the alternative procedure, the Court may receive that separate document as evidence that the defendant was convicted of the offences alleged in that separate document and of the particulars relating to the convictions set out in it, but the fact that a copy of the separate document was served on the defendant shall not be communicated to the Court or any member of the Court unless and until the defendant has been convicted of the offence alleged in that complaint, if the disclosure of the prior convictions alleged in the separate document is not admissible under the laws of evidence apart from this section.

(4) Where a defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in subsection (1) of section fifty-six A of this Act and by a copy of a separate document as mentioned in subsections (1) and (2) of this section and he appears on the hearing of the complaint to which the summons refers—

- (a) the fact that a copy of the separate document was served on the defendant shall not be communicated to the Court or any member of the Court unless and until the defendant has been convicted of the offence alleged in that complaint, if the disclosure of the prior convictions alleged

in the separate document is not admissible under the laws of evidence apart from this section; and

- (b) the separate document shall not be tendered in evidence without the consent of the defendant, if the separate document is not admissible under the laws of evidence apart from this section.

(5) Without in any way limiting the generality of the provisions of the law with respect to the re-hearing of complaints it is hereby declared that, where evidence of prior convictions is tendered pursuant to the provisions of this section, the Court may set aside on such terms as to costs or otherwise as the Court thinks just any conviction or order if it has reasonable grounds to believe that the document tendered in evidence was not in fact brought to the notice of the defendant or that the defendant was not in fact convicted of the offences as alleged in the document.

57. (1) A licence or permit may be revoked or suspended by the Commissioner, on the ground that the holder has not complied with any one or more of the conditions of, or relating to, the licence or permit.

Power to
revoke or
suspend
licence or
permit.
S. 55.

(2) The Commissioner shall not revoke or suspend a licence unless, owing to the frequency of the breach of the conditions of, or attached to, the licence, or to the breach having been committed wilfully, or to the danger to the public involved in the breach, the Commissioner is satisfied that the licence should be revoked or suspended.

(3) An appeal lies to a stipendiary magistrate against the decision of the Commissioner in revoking or suspending a licence, and the provisions of this section apply to any such appeal.

(4) A person instituting an appeal pursuant to this section shall lodge in the court in which the stipendiary magistrate is to sit and hear the appeal an amount of twenty dollars, by way of security for the costs of his appeal; and the appeal shall not be heard until such time as that amount is so lodged.

(5) On hearing an appeal instituted under this section, the magistrate may order that the revocation or suspension be set aside, subject to such conditions as the magistrate thinks fit, or he may dismiss the appeal and, in any event, may make such order as to costs as he thinks fit.

(6) The decision of a stipendiary magistrate made under this section is final.

Recovery of penalties.
S. 56.

58. (1) The Commissioner may direct, either generally or in any particular case, proceedings to be taken for the recovery of penalties in respect of offences committed against the provisions of this Act or of any regulation.

(2) In any such proceedings no proof is, unless evidence is given to the contrary, required—

- (a) of a direction to take the proceedings;
- (b) of the authority of any officer of the Commissioner, or of any other person, to take the proceedings; or
- (c) of the due appointment of the Commissioner.

(3) The provisions of this section do not affect the power of a member of the Police Force to take proceedings for the recovery of any penalties under this Act.

Saving of operation of Road Traffic Act, 1974.
S. 57.

59. Save as otherwise expressly provided, nothing in this Act limits or affects the operation of the Road Traffic Act, 1974, but that Act shall be construed subject to the express provisions of this Act.

60. (1) The Governor may make regulations for any purpose for which regulations are contemplated or required by this Act and may make all such other regulations as may, in his opinion, be necessary or convenient for giving full effect to the provisions of, and for the due administration of, this Act.

Regulations.
[Ss. 58 and
58A.]
Amended by
No. 79 of
1976, s. 7.

(2) Without limiting the generality of subsection (1) of this section, the Governor may make regulations with respect to—

- (a) the custody and method of affixing the Commissioner's common seal;
- (b) the form of the common seal;
- (c) the design and construction of omnibuses, so as to secure the safety, comfort, and convenience of passengers and the public;
- (d) the maximum fares to be paid by passengers on omnibuses;
- (e) the returns of earnings of omnibuses for the purpose of assessing licence fees (such information being treated as confidential); the method of assessment; the time and manner of payment; and providing for refund of excess payments of fees or recovery of fees short paid;
- (f) stopping places and signs and shelters;
- (g) the fixing of the power load weight of a commercial goods vehicle required to be licensed under this Act, where the method is not expressly prescribed by this Act;
- (h) the maintenance and repair of public vehicles;
- (i) the publication of time tables, fares, and rates, whether by exhibition in or on public vehicles, or otherwise;
- (j) applications for licences or permits under this Act and the revocation, suspension, or transfer of such licences or permits;

Transport Commission.

- (k) the form and conditions of and any particulars to be set out in licences or permits under this Act;
 - (l) records to be kept in relation to public vehicles;
 - (m) the furnishing by owners of public vehicles of statistical and other information;
 - (ma) the carrying on public vehicles, in respect of loads thereon, of such documents or classes of documents as are specified in the regulations;
 - (n) the fees payable in respect of applications under this Act;
 - (o) the fee payable for any special permit under this Act;
 - (p) providing for distinguishing words, letters, numbers, colours, or marks, being or not being placed on public vehicles; and
 - (q) the provision and maintenance of the road transport of goods in areas not served by railways, and, in particular, in relation to any such transport—
 - (i) the areas to be served, and the routes to be followed;
 - (ii) the classes of goods to be carried, and
 - (iii) the rates to be paid in respect of, and the manner of payment of, any subsidy granted for its provision and maintenance, pursuant to this Act.
- (3) Any regulations made under this section—
- (a) may be of general or specially limited application, according to time, place, or circumstances; and
 - (b) may prescribe penalties of not exceeding fifty dollars for any breach of them.

(4) Notwithstanding the provisions of section thirty-six of the Interpretation Act, 1918, a regulation made under this section for the purpose of reducing or withdrawing any subsidy granted in aid of road transport under the provisions of this Act, shall not take effect or have any force of law until such time as the regulation is no longer subject to disallowance under the former section.

61. No matter or thing done by the Minister, by the Commissioner or by any person acting with the authority of the Minister, or by any member of the Police Force, in good faith for the purpose of carrying out this Act, shall subject the Crown, the Minister, the Commissioner or any person acting with the authority of the Minister or the Commissioner, or subject the member of the Police Force, to any liability in respect of the matter or thing so done.

Protection of Minister, Commissioner and other persons.
S. 59.

62. (1) The Transport Co-ordination Fund established by the State Transport Co-ordination Act, 1933, is continued under this Act, as if it were established by this Act, and shall be known as the Transport Commission Fund (in this section called "the Fund").

Financial provision.
[S. 60.]
Amended by No. 51 of 1975, s. 8.

(2) There shall be placed to the credit of the Fund—

- (a) all moneys received by the Commissioner, including those received from the Crown, in respect of premiums paid, and of licences granted, and for fees payable, under this Act;
- (b) the moneys (if any) appropriated by Parliament for the administration of this Act; and
- (c) any moneys recovered by the Commissioner on the enforcement of bonds, including those executed by, or on behalf of, the Crown, as provided by section seventeen.

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- (3) There shall be paid out of the Fund—
- (a) the cost of the administration of this Act and of the Road Maintenance (Contribution) Act, 1965;
 - (b) contributions to the Superannuation Fund payable by the Commissioner under any agreement made between him and the Treasurer, pursuant to the provisions of section six of the Superannuation and Family Benefits Act, 1938;
 - (c) such amounts as are, in the opinion of the Commissioner, necessary or expedient, in the interests of public transport, to be granted in aid of any transport operated by the holder of a licence for a public vehicle or for, or towards, the provision of shelters or other amenities on, or adjacent to, an omnibus route; and
 - (d) such amount as is, in the opinion of the Treasurer of the State, necessary or expedient to establish and maintain a reserve of moneys to facilitate the carrying out by the Commissioner of his powers and functions under this Act.
- (4) At the end of any financial year, any balance remaining in the Fund, after providing for the payments specified in subsection (3) of this section, shall be divided into three portions in the proportion that the licence fees derived respectively from licences issued for omnibuses, commercial goods vehicles and aircraft bear to the aggregate of all licence fees received during that year, and of those portions—
- (a) that which is proportionate to the fees for the issue of omnibus licences shall be applied towards the maintenance and improvement of the roads on which the omnibuses operate, and shall, subject to subsection (5) of this section, be divided

equitably amongst the various statutory authorities concerned in the maintenance and improvement of those roads;

- (b) that which is proportionate to the fees for the issue of licences for commercial goods vehicles shall be applied towards the maintenance and improvement of the roads on which the commercial goods vehicles operate, and shall, subject to subsection (5) of this section, be divided equitably amongst the various statutory authorities concerned in the maintenance and improvement of those roads; and
- (c) that which is proportionate to the fees for the issue of licences for aircraft shall be held in trust by the Commissioner and shall be applied, as and when the Commissioner thinks fit, towards the provision, maintenance or improvement of any aircraft landing ground or of any facilities thought necessary for the safe operation of any aircraft using or about to use any aircraft landing ground.

(5) Where the Commissioner expends from the balance any sums for the provision, maintenance or both of signs, shelters or both, which by this Act the Commissioner is authorised to do, on or adjacent to any road or street under the care, control or management of any of those statutory authorities, the amount payable to the statutory authority, as the result of a division mentioned in paragraph (a) or paragraph (b) of subsection (4) of this section, shall be reduced by the sum so expended by the Commissioner, and shall be brought into account in respect of the division.

63. Subject to the regulations, the Minister may, out of such moneys as may, from time to time, be appropriated by Parliament, authorise the payment of subsidies for the purposes of this Act.

Subsidies.

Transport Commission.

FIRST SCHEDULE.

Section
33 (4).
First
Schedule.
Amended by
No. 94 of
1972, s. 4.

1. The carriage of produce of farms or forests or farming requisites or requisities for the production of timber between any farm or forest and the railway station or town nearest to the farm or forest.

For the purposes of this item the term "farm" includes a sheep station or a cattle station.

2. The carriage of produce and goods between the station property of any person engaged in the pastoral industry between such property and the railway station or town nearest to the property.

3. The carriage of livestock, poultry, fruit, vegetables, dairy produce or other perishable commodities or wheat or oats for sale or, in the case of livestock, for sale or agistment, irrespective of quantity or value, from the place where they are produced to any other place, in a vehicle owned by the producer thereof and, on the return journey, the carriage of requisites for the domestic use of the producer or for use by him in the production of the commodities herein named.

4. The carriage of bees, bee hives, honey, bees wax and beekeepers' requisites and appliances, in the course of the production of honey, in a vehicle owned by the producer thereof.

5. The carriage of grain in a vehicle owned by the producer thereof to a flour mill for the purpose of being gristed, milled, or treated, and the carriage from the mill of flour, meal, bran, pollard, or offal received in exchange for the grain, for use on the farm where the grain was produced.

6. The carriage of ore from mines and mining requisites within any one prescribed mining district.

7. By the Crown or any local authority for its own purposes other than the carriage of goods for hire or reward.

8. The carriage of household furniture or personal effects of a householder or a member of his family, where the furniture or effects are being moved—

- (a) from residence to residence;
- (b) from storage to residence;
- (c) from residence to storage or sale;
- (d) from a vendor to the residence of the purchaser.

9. The carriage by commercial travellers, of samples of goods for exhibition to prospective purchasers and not for sale.

10. The carriage of livestock to or from agricultural shows or exhibitions.

11. The carriage of milk or cream to the nearest factory.

12. The carriage of shearing employees and their luggage to any place or places where they are to carry out any shearing contract and the return by the same vehicle to their place of residence on completion of the contract.

13. The carriage of goods off any route or outside any area in respect of which the Commissioner has granted a licence pursuant to his acceptance of a tender called under the provisions of this Act and within a radius of sixty kilometres from any one country railway station or railway siding, if the goods have been, or are to be, transported by railway for a distance of not less than twenty kilometres to or from the railway station or siding.

14. Any carriage for which, in the opinion of the Commissioner, it is necessary, either generally or subject to conditions, to grant an exemption from the provisions of section twenty.

15. The carriage of such goods as may, from time to time, be prescribed by regulation, if the goods are of the same or a similar kind as or to those mentioned in any of the preceding items of this Schedule.

For the purposes of this Schedule a reference to a railway station or town nearest to a property is a reference to that station or town most accessible to the property or farm, as the case may be, and, notwithstanding the definition of "railway" in this Act, the term, "railway station," includes any railway station whatsoever.

Transport Commission.

Second
Schedule.
Substituted
by No. 51 of
1975, s. 9.

SECOND SCHEDULE.

Trailers and semi-trailers.

	\$
Up to 1 250 kg gross weight	50.00
Exceeding 1 250 kg but not exceeding 2 000 kg	70.00
Exceeding 2 000 kg but not exceeding 3 000 kg	120.00
Exceeding 3 000 kg but not exceeding 4 000 kg	160.00
Exceeding 4 000 kg but not exceeding 5 000 kg	220.00
Exceeding 5 000 kg but not exceeding 6 000 kg	280.00
Exceeding 6 000 kg but not exceeding 7 000 kg	340.00
Exceeding 7 000 kg but not exceeding 8 000 kg	410.00
Exceeding 8 000 kg but not exceeding 9 000 kg	490.00
Exceeding 9 000 kg but not exceeding 10 000 kg ..	570.00
For every additional 1 000 kg	50.00

