

WESTERN AUSTRALIA.

TRANSPORT ACT 1966-1982.

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Approved for Reprint 19 July 1983.

WESTERN AUSTRALIA.

TRANSPORT.

No. 53 of 1966¹

[As amended by Acts:—

No. 6 of 1968, assented to 26 September 1968;
No. 64 of 1970,² assented to 17 November 1970;
No. 58 of 1972, assented to 31 October 1972;
No. 94 of 1972,³ (as amended by No. 83 of 1973⁴);
No. 51 of 1975, assented to 18 September 1975;
No. 24 of 1976,⁵ assented to 9 June 1976;
No. 79 of 1976,⁶ assented to 18 October 1976;
No. 53 of 1977, assented to 23 November 1977;
No. 9 of 1979, assented to 18 May 1979;
No. 93 of 1979,⁷ assented to 17 December 1979;
No. 47 of 1980, assented to 19 November 1980;
No. 48 of 1980, assented to 19 November 1980;
No. 8 of 1981,⁸ assented to 22 May 1981;
No. 56 of 1981,⁹ assented to 13 October 1981;
No. 70 of 1981,¹⁰ assented to 30 October 1981;
No. 106 of 1981,¹¹ assented to 4 December 1981;
No. 25 of 1982,¹² assented to 27 May 1982;

and reprinted pursuant to the Amendments Incorporation Act 1938.]

This Act was originally cited as the Road and Air Transport Commission Act 1966 and later as the Transport Commission Act 1966. The citations were altered by Act No. 64 of 1970 (section 1 (3)) and Act No. 93 of 1979 (section 1 (3)), respectively.

The sectional references in brackets 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 June 1967; see *Gazette* 9/6/67, p. 1547.

² Came into operation on 8 August 1971; see *Gazette* 16/7/81, pp. 2557-58.

³ Metric Conversion Act 1972. Relevant amendments included in this reprint effective from 1 July 1973; see *Gazette* 4/5/73, p. 1110.

⁴ Metric Conversion Act Amendment. Relevant amendments included in this reprint effective from 7 March 1974; see *Gazette* 7/3/74, p. 762.

⁵ Came into operation on 1 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.

⁷ Came into operation 8 February 1980; see *Gazette* 8/2/80, p. 383.

⁸ All provisions other than section 3 came into operation 8 June 1981; see *Gazette* 5/6/81, p. 1729.

Section 3 came into operation 1 October 1981; see *Gazette* 7/8/81, p. 3203.

⁹ All provisions other than sections 10 and 11 came into operation on 13 October 1981. Sections 10 and 11 came into operation on 31 December 1981; see *Gazette* 31/12/81, p. 5363.

¹⁰ Came into operation 1 August 1982; see *Gazette* 23/7/82, p. 2843.

¹¹ Came into operation 2 February 1982; see *Gazette* 2/2/82, p. 393.

¹² Came into operation 1 July 1982; see section 2.

Long Title.
Amended by
No. 64 of
1970, s. 3;
No. 53 of
1977, s. 2;
No. 9 of
1979, s. 8;
No. 93 of
1979, s. 3;
No. 47 of
1980, s. 2.

AN ACT to provide for the appointment and functions of a Commissioner of Transport, and to make provision as to the review, licensing and control of the transport of passengers and goods by road, rail, air, and sea and as to the construction or closure of railways; for the progressive removal of measures which hinder the efficient and safe transport of goods; as to the operation of ships engaged in the coasting trade; as to the minimum rates of remuneration payable in respect of the operation of commercial goods vehicles pursuant to sub-contracts; and as to the licensing of certain persons who carry on the business of selling petroleum products and for incidental and other purposes.

[Assented to 5 December 1966.]

BE it enacted—

PART I—PRELIMINARY.

Short title.

1. This Act may be cited as the *Transport Act 1966-1982*.

Commencement.

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

[3 repealed by No. 56 of 1981, s. 3.]

Interpretation.

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

[S. 3.]

Amended by
No. 94 of
1972, s. 4;
No. 51 of
1975, s. 4;
No. 93 of
1979, s. 4;
No. 47 of
1980, s. 4;
No. 48 of
1980, s. 3;
No. 8 of
1981, s. 3;
No. 106 of
1981, s. 25.

“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;

¹ Came into operation on 19 June 1967; see *Gazette* 9/6/67, p. 1547.

“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 authorized, 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 any other person acting in pursuance of powers or duties conferred upon him by or under this Act, and any person utilized 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;

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“operate”, as applied to a vehicle, means to carry, or offer or agree to carry, or to be responsible for arranging the carriage of, passengers or goods for hire or for any consideration, or in the course of or in connection with any trade or business whatever, and cognate expressions shall be construed accordingly;

“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;

“transport service” means any service for the carriage of passengers or goods, whether by road, rail, air, or sea;

“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.

(2a) For the purposes of this Act, a vehicle which draws a semi-trailer or a trailer which is operating is itself operating.

(3) For the purposes of this Act, a motor vehicle shall be deemed not to be used or intended to be used as a passenger vehicle to carry passengers for hire or reward by reason only of the carriage of passengers or the offer to carry passengers if the carriage or offer is made pursuant to a motor vehicle pooling arrangement.

(4) For the purposes of subsection (3), a carriage of passengers or an offer to carry passengers is made pursuant to a motor vehicle pooling arrangement if the carriage or offer is—

- (a) incidental to the main purpose of the journey;
- (b) not the result of touting for passengers by the driver or any other person on any road; and
- (c) made pursuant to an arrangement for the carriage of the passengers for a consideration limited to—
 - (i) an undertaking by or on behalf of the passenger to carry the driver or a member of the driver’s family on a similar journey; or

- (ii) the payment of an amount which does not contain any element of profit in respect of the operation of the motor vehicle or the motor vehicle pool or any recompense for the time of the driver.

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.

Transition.
[S. 4A.]

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.

(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.

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PART II.—ADMINISTRATION.

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

7. (1) 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.]
Amended by
No. 47 of
1980, s. 5.

[(2) repealed by No. 47 of 1980, s. 5.]

(3) 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.

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.

Deputy
Commis-
sioner.
[S. 4C.]

(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.

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;

Appointment
of Com-
missioner
and Deputy
Commis-
sioner, term
and condi-
tions of
appoint-
ment.
[S. 4D.]

Transport.

- (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.

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

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,

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

11. If the person appointed to the office of Commissioner or Deputy Commissioner is an officer within the meaning of the Public Service Act 1978, 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.

Appointment of officer under Public Service Act 1978, not to prejudice his rights under that Act, etc. [S. 4F.]

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.

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

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.

Leave of absence. [S. 4H.]

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—

Annual report. [S. 5 (2).]

- (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.

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

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.

(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 1978.

(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.

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

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.

(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.—Functions, Powers and Duties of
the Commissioner.*

Heading.
Amended by
No. 47 of
1980, s. 6.

15B. (1) Subject to this Act and to the general control of the Minister, the Commissioner is responsible for the administration of this Act.

Functions.
Inserted by
No. 47 of
1980, s. 7.

(2) It is the function of the Commissioner to—

(a) investigate and inquire into existing transport services for the purpose of—

(i) ascertaining the need of, and priorities for, the investment therein of public money;

(ii) determining the adequacy of existing services;

(iii) ensuring the impartial and equitable treatment of conflicting interests;

(b) recommend to the Minister the provision of new or additional road transport services and the calling of tenders;

(c) examine and report to the Minister on any proposal for the construction of a new railway;

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- (d) recommend to the Minister the closure or partial suspension of any transport service, including a railway;
- (e) advise the Minister on the administration of—
 - (i) the Eastern Goldfields Transport Board Act 1946;
 - (ii) the Taxi-cars (Co-ordination and Control) Act 1963; and
- (f) perform duties as directed by the Minister relating to other matters associated with or affecting transport.

(3) Without affecting any other provision of this section, the Commissioner shall, as the Treasurer may from time to time require, report on, and make recommendations in respect of, the appropriation of moneys, the application of loan funds, and public borrowing, under, and for the purposes of, either of the Acts mentioned in paragraph (e) of subsection (2) of this section.

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 authorized 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.

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,—

Conditions
of tender.
[S 12.]

- (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.

Delegation.
[S. 10A.]

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 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.

Heading.
Inserted by
No. 47 of
1980, s. 8.

Division 3.—Construction or Closure of Railways.

Minister to
table report
or recom-
mendation.
Inserted by
No. 47 of
1980, s. 8.

18A. Before the second reading of a Bill for the construction, or for the closure, of a railway the Minister shall cause the report or the recommendation, as the case may be, made by the Commissioner in that regard pursuant to section fifteen B to be laid before each House of Parliament, in turn.

PART III.—LICENCES.

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

19. (1) Notwithstanding the provisions of any other Act, but subject to the provisions of any notice published pursuant to subsection (2) of this section, this Part of this Act applies to and in relation to every vehicle that is operated by any person (including vehicles operated by the Crown, or by an agency of the Crown, in right of the State) other than vehicles operated under the Metropolitan (Perth) Passenger Transport Trust Act 1957.

Application
of Part.
Substituted
by No. 93 of
1979, s. 5.

(2) The Minister may, by notice published in the *Government Gazette*, exempt—

- (a) any vehicle or class of vehicle;
- (b) any vehicle used for any purpose or any class of purpose; or
- (c) any vehicle whilst operated in any part of the State,

as specified in that notice, from the provisions of this Part of this Act.

19A. (1) The Commissioner may—

- (a) delegate to any officer specified in the instrument of delegation, all or any of his powers and functions under this Part of this Act;
and
- (b) vary or revoke any delegation.

Delegation
to officers.
Inserted by
No. 56 of
1981, s. 4.

(2) A function or power delegated by the Commissioner pursuant to subsection (1) of this section may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) If the exercise of a power or the performance of a function in relation to a matter is dependent upon the opinion, belief, or state of mind of the Commissioner and that power or function has been delegated under subsection (1) of this section, that power or function may be exercised or performed by the delegate upon the opinion, belief, or state of mind of the delegate in relation to that matter.

(4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.

Vehicles
operating to
be licensed.
[S. 14.]
Amended by
No. 93 of
1979, s. 6.

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.

(4) For the purposes of determining whether or not a licence is required under this Part in respect of any commercial goods vehicle, where goods are to be conveyed from one place to another, and the carriage of those goods is effected by stages whether by one vehicle or by different vehicles, the whole distance over which the goods are, or are to be, carried shall be taken to comprise the one journey and every vehicle taking part in the carriage of the goods in the course of that journey is to be deemed to make the whole journey.

21. (1) In respect of every public vehicle licence the following fees are payable to the Commissioner in the prescribed manner, in relation to the term of the licence or such shorter period as is prescribed, 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; No. 9 of 1979, s. 10; No. 93 of 1979, s. 7.

(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,

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

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- (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) Subject to the limitations imposed by subsection (1) of this section, the Commissioner may at any time vary the fee determined by him in respect of any public vehicle 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 or for the period 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. (1) Every application for an omnibus licence shall be in writing, setting out—

Applications for licences.
[S. 23.]
Amended by No. 56 of 1981, s. 5.

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

(2) Where the application relates to a licence required for a particular purpose of limited duration, notwithstanding subsection (1) of this section the Commissioner may grant the licence without prior lodgement of the written 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 14 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 Commissioner before grant or refusal of licence.

[S. 24.]

Amended by No. 47 of 1980, s. 9; No. 8 of 1981, s. 4.

26. The Commissioner may, before granting or refusing a licence for an omnibus, take into account any one or more of the following matters—

- (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;
- (d) the character, qualifications and financial stability of the applicant; and
- (e) the interest of persons requiring transport to be provided, and of the community generally,

but shall not be obliged, in relation to any particular licence application, to take into account all of these matters.

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

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

- (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 authorized 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.

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

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

- (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.

Power
to grant
omnibus
licences
for period of
seven years.
[S. 29.]
Amended by
No. 33 of
1979, s. 8.

30. (1) A licence for an omnibus may be granted for a period of not more than seven years or for a particular purpose of specified duration.

(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.

Permits.
[S. 30.]
Amended by
No. 56 of
1981, s. 6.

31. (1) The Commissioner may grant to the owner of an omnibus licensed under this Part, a permit authorizing the vehicle to operate, subject to such conditions as may be imposed by the Commissioner,—

(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.

(2) Every application for a permit under subsection (1) of this section shall be in writing in the form prescribed.

(3) Notwithstanding subsection (2) of this section, the Commissioner may grant a permit without prior lodgement of the written application where he is satisfied that sufficient information has been made available to him to enable him so to do.

(4) A permit granted pursuant to subsection (3) of this section—

(a) shall be deemed to take effect upon verbal notification to the applicant that the permit 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 14 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.

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.
(1) Licensing.

Sub-heading. Inserted by No. 53 of 1977, s. 4.

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; No. 93 of 1979, s. 9.

(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) deleted by No. 93 of 1979, s. 10.]

(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

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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.

Certain
licences
to be
granted.
Substituted
by No. 93 of
1979, s. 10.

34. (1) The Commissioner shall grant upon application a licence to operate any commercial goods vehicle—

- (a) wholly within sixty kilometres of the General Post Office, Perth; or
- (b) where the Governor by Order in Council (which may be varied or cancelled by a subsequent Order in Council made under this section) has determined that the provisions of this section shall apply in relation to any such vehicle.

(2) An Order in Council made for the purposes of this section may be made so as to apply—

- (a) to any specified vehicle, or to vehicles of a specified class;

- (b) to vehicles used for a specified purpose or any specified class of purpose; or
- (c) to vehicles whilst operated in a specified part of the State,

and may provide that the provisions of this section shall not apply to any vehicle (to which they otherwise would apply) if that vehicle is operated for a purpose or in a locality which is by that Order determined to be a purpose or locality in respect of which the Order is not to apply.

(3) The provisions of section thirty-six, section thirty-seven, and section thirty-nine do not apply to or in relation to a licence granted by the Commissioner under this section or to an application for a licence, but the provisions of this Part other than those sections shall apply to any such licence or application.

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;
No. 47 of
1980, s. 10.

- (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 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 fourteen 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.

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

- (a) may take into account any one or more of the following matters—
 - (i) 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;
 - (ii) 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;
 - (iii) the condition of the roads to be included in any proposed route or area;

Matters to be taken into consideration by the Commissioner before grant or refusal of licence. Substituted by No. 8 of 1981, s. 5.

(iv) the character, qualifications, and financial stability of the applicant;

and

(v) the interests of persons requiring transport to be provided, and of the community generally,

but shall not be obliged, in relation to any particular licence application, to take into account all of these matters; and

(b) shall take into consideration any direction given by the Minister as to the policies of the government in relation to economic development, decentralisation, or other matters.

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 authorized by, the licence.

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

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—

- (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.]
Amended by
No. 93 of
1979, s. 12.

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 specified duration.

Permits.
[S. 43.]
Amended by
No. 56 of
1981, s. 7.

41. (1) The Commissioner, may grant to the owner of any commercial goods vehicle licensed under this Division a permit authorizing 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.

(2) Every application for a permit under subsection (1) of this section shall be in writing in the form prescribed.

(3) Notwithstanding subsection (2) of this section, the Commissioner may grant a permit without prior lodgement of the written application where he is satisfied that sufficient information has been made available to him to enable him so to do.

(4) A permit granted pursuant to subsection (3) of this section—

- (a) shall be deemed to take effect upon verbal notification to the applicant that the permit 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 14 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.

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.

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

(2) *Recommendations in respect of operation pursuant to subcontracts.*

Sub-heading.
Inserted by No. 53 of 1977, s. 4.

42A. In this subdivision, unless the contrary intention appears—

Interpretation.
Inserted by No. 53 of 1977, s. 4.

“authorized person” means a person who is authorized in writing by the Commissioner to assist the Commissioner in the exercise of his functions and the discharge of his duties pursuant to this subdivision;

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“prime contractor” means any person who for any consideration agrees with a consignor or consignee to transport goods for the consignor or consignee, or to arrange the transport of goods for the consignor or consignee;

“service” or “services” in relation to a sub-contractor means the operation of a commercial goods vehicle for the transport of goods which a prime contractor has agreed with a consignor or consignee to transport, or to arrange to transport, for the consignor or consignee;

“sub-contractor” means an owner of a commercial goods vehicle who is, under a contract for service, engaged by any person to operate the commercial goods vehicle for the transport of goods which a prime contractor has agreed with a consignor or consignee to transport, or to arrange to transport, for the consignor or consignee.

Inquiries
and recom-
mendations
by the
Commis-
sioner.
Inserted by
No. 53 of
1977, s. 4.

42B. (1) The Commissioner shall from time to time, as provided by this subdivision, inquire into and recommend the minimum rates of remuneration for the services supplied by a sub-contractor from south of the twenty-sixth parallel of latitude to the north thereof.

(2) A recommendation of the Commissioner—

(a) shall be in writing; and

(b) shall be signed by the Commissioner.

(3) A copy of every recommendation made by the Commissioner shall be published in the *Government Gazette*.

(4) Without limiting the generality of subsection (1) of this section, a recommendation made by the Commissioner may recommend any one or all of the following—

- (a) different minimum rates according to the difference in quality, description, or volume of the service supplied, or in respect of the different forms, modes, conditions, terms, or localities of operation of commercial goods vehicles;
- (b) different minimum rates for different parts of the State;
- (c) minimum rates according to any principle or condition specified in the recommendation.

42C. (1) Notwithstanding anything contained elsewhere in this Act, on and after the appointed day a person shall not, for hire or reward, operate a commercial goods vehicle from south of the twenty-sixth parallel of latitude to the north thereof, unless he is the holder of a Certificate of Authority issued to him by the Commissioner for that purpose.

Certificate of authority to operate from south of the 26th parallel to the north thereof. Inserted by No. 53 of 1977, s. 4.

(2) The Commissioner may, on payment of the prescribed fee, issue such a certificate to the owner of a licensed commercial goods vehicle, if the Commissioner is satisfied that it is in the public interest to do so, and may attach to the certificate such conditions as to the mode of operation of the vehicle as he thinks proper to impose in the public interest.

(3) Subject to subsection (4) of this section such a certificate shall be valid for such period, not exceeding twelve months, as is determined by the Commissioner and is specified on the certificate.

(4) The Commissioner may revoke such a certificate at any time if he is satisfied that it is in the public interest to do so, or if he is satisfied that the owner has not complied with any one or more of the conditions relating to the certificate.

(5) The prescribed fee shall not exceed fifty dollars per annum and—

- (a) where the certificate is for a period of less than one year the fee shall be one-twelfth of the prescribed fee for each month or portion thereof the certificate is valid; and
- (b) where the certificate is revoked the fee shall be as for the period the certificate was valid and any excess paid shall be refunded.

(6) In this section “appointed day” means such date as is, for the purposes of this section, fixed by the Governor by Order in Council published in the *Government Gazette*.

Further functions and powers of the Commissioner. Inserted by No. 53 of 1977, s. 4.

42D. (1) The Commissioner shall conduct such investigations, inquiries, study, or research as he considers necessary or desirable for the purposes of this subdivision, and for the purposes of informing, and making recommendations to, the Minister on matters related to the operational and economic stability of the commercial goods vehicle sector of the transport industry in this State.

(2) For the purposes of exercising the functions, and discharging the duties imposed on him by this subdivision, the Commissioner has the powers, authority, and protection of a Royal Commission under the Royal Commissions Act 1968 and the provisions of that Act apply with such modifications as are necessary, to and in relation to any investigation and inquiry that he may make for the purposes of this subdivision.

42E. Without limiting the power of the Commissioner as provided by subsection (2) of section forty-two D, for the purpose of obtaining information necessary for the effective operation of this subdivision the Commissioner, Deputy Commissioner, or an authorized person may request and receive from—

Information.
Inserted by
No. 53 of
1977, s. 4.

- (a) persons involved in the operation of, and persons for whom goods are transported or are to be transported by, commercial goods vehicles; and
- (b) organizations which are acknowledged by the Commissioner as representative of identifiable groups of such persons,

information, in writing or otherwise, in relation to the operation of commercial goods vehicles from south of the twenty-sixth parallel to the north thereof.

42F. A person who discloses any information relating to any business that has been furnished to him or obtained by him pursuant to this subdivision is, unless the disclosure is made—

Secrecy.
Inserted by
No. 53 of
1977, s. 4.

- (a) with the consent of the person carrying on or operating the business;
- (b) in connection with the administration of this Act; or
- (c) for the purposes of any legal proceedings in respect of an offence as provided by section forty-two G or of any report of such proceedings,

guilty of an offence against this Act.

Penalty: One thousand dollars.

Offences as to information.
Inserted by No. 53 of 1977, s. 4.

42G. A person who, when requested to give any information pursuant to section forty-two E, fails to do so unless there is reasonable cause for failing to do so (proof of which shall lie on that person), or knowingly makes any false or misleading statement in relation thereto, commits an offence against this Act for which the penalty is one thousand dollars, and, in the case of the offence continuing, one thousand dollars for each day the offence continues.

Further effect of offences.
Inserted by No. 53 of 1977, s. 4.

42H. (1) When an offence as provided by section forty-two G is committed by the holder of a commercial goods vehicle licence the Commissioner may revoke the licence.

(2) Where an offence as provided by section forty-two G is committed by a person who is not the holder of a commercial goods vehicle licence and that person subsequently applies for a licence for a commercial goods vehicle, the Commissioner may refuse to grant such a licence to that person on the grounds that he has committed such an offence.

Division 4.—Aircraft.

Licences for aircraft.
[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, authorize the operation of the aircraft between the points or in any areas specified in the licence.

43A. A licence for an aircraft may be granted for a period of one year or for a particular purpose of specified duration.

Period of
licence.
Inserted by
No. 56 of
1981, s. 8.

43B. (1) The Commissioner may grant to the owner of any aircraft licensed under this Division a permit authorizing the aircraft to operate, subject to such conditions as may be imposed by the Commissioner,—

Permits.
Inserted by
No. 56 of
1981, s. 8.

- (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.

(2) Every application for a permit under subsection (1) of this section shall be in writing in the form prescribed.

(3) Notwithstanding subsection (2) of this section, the Commissioner may grant a permit without prior lodgement of the written application where he is satisfied that sufficient information has been made available to him to enable him so to do.

(4) A permit granted pursuant to subsection (3) of this section—

- (a) shall be deemed to take effect upon verbal notification to the applicant that the permit 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 14 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.

Applica-
tions for
licences.
[S. 47.]
Amended by
No. 56 of
1981, s. 9.

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

- (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.

(2) Where the application relates to a licence required for a particular purpose of limited duration, notwithstanding subsection (1) of this section the Commissioner may grant the licence without prior lodgement of the written 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 14 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.

45. The Commissioner may, before granting or refusing a licence for an aircraft, take into account any one or more of the following matters—

Matters to be taken into consideration by Commissioner before grant or refusal of licence.
[S. 47.]
Amended by No. 47 of 1980, s. 11; No. 8 of 1981, s. 6.

- (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
 - (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;
- (d) the character, qualifications and financial stability of the applicant; and
- (e) the interests of persons requiring transport to be provided, and of the community generally,

but shall not be obliged, in relation to any particular licence application, to take into account all of these matters.

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.
Inserted 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.

Inserted 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.

Inserted 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, specialized 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.

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

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 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.
Inserted by No. 64 of 1970, s. 10.

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 1982.

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

PART IIIA.—BUSINESS FRANCHISE
(PETROLEUM PRODUCTS) LICENSING.

47G. (1) In this Part unless the contrary intention appears—

Interpretation.
Inserted by No. 9 of 1979, s. 11.
Amended by No. 47 of 1980, s. 12; No. 56 of 1981, s. 10.

“diesel fuel” means a petroleum or shale product used or capable of use in propelling a diesel engined road vehicle;

“licence” means a licence granted under this Part;

“licensee” means the holder of a licence;

Transport.

“motor spirit” means petrol or other petroleum or shale spirit having a flashpoint of less than 23° Celsius when tested in an Abel Pensky closed test apparatus but does not include—

- (a) aviation gasoline;
- (b) solvents;
- (c) special boiling point spirits;
- (d) liquefied petroleum gas; or
- (e) any substance prescribed under subsection (5);

“petroleum products” means motor spirit or diesel fuel;

“road vehicle” means a vehicle designed solely or principally for transporting persons, goods or animals by road;

“subsection” means subsection of the section in which the term is used;

“wholesaling petroleum products” means—

- (a) selling motor spirit where that motor spirit has not previously been sold in the State;
- (b) selling diesel fuel for use only in propelling diesel engined road vehicles where that diesel fuel has not previously been sold in the State for use only in propelling such vehicles; or
- (c) in the case of a person who is required to hold a licence under section 47K, using motor spirit or diesel fuel for his own purposes in the course of his business,

and “wholesaled” in relation to motor spirit and diesel fuel has a correlative meaning.

(2) For the purposes of the interpretations of “wholesaling petroleum products” and “wholesaled” in subsection (1)—

- (a) the supply of petroleum products from a refinery for the purposes of resale shall not be regarded as constituting a sale of those petroleum products; and
- (b) the delivery of petroleum products into the State from elsewhere shall not be regarded as constituting a sale of those products in the State.

(3) A reference in this Part to the carrying on of the business of wholesaling petroleum products includes a reference to the carrying on of that business as part of or in conjunction with any other business.

(4) A reference in this Part to a person who carries on the business of wholesaling petroleum products does not extend to a person who carries on such a business as an agent or employee of another person who carries on such a business.

(5) The Governor may by regulation prescribe any substance as not being a motor spirit for the purposes of this Part.

47H. (1) The Commissioner shall consider and determine applications for licences under this Part and shall have such other powers and functions as are conferred on him by this Part.

Functions
of Com-
missioner,
etc.
Inserted by
No. 9 of
1979, s. 11.

(2) The Commissioner may by instrument in writing under his hand delegate to the Deputy Commissioner or to any other officer assisting the Commissioner in the administration of this Part all or any of his powers or functions under this Part, except this power of delegation.

Transport.

(3) A delegation under subsection (2) may be revoked at any time by the Commissioner.

(4) A power or function, the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation by the delegate.

(5) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers or functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(6) Notwithstanding the provisions of subsection (2) or any delegation made under this section, the Commissioner may continue to exercise or perform all or any of the powers or functions conferred or imposed on him by this Part.

(7) Any act or thing done or suffered by a delegate of the Commissioner while acting in the exercise of a delegation under this section, shall have the same force and effect as if the act or thing done had been done or suffered by the Commissioner.

(8) Where the exercise or performance by the Commissioner of any power or function under this Part or the operation of any provision of this Part is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised or performed by a delegate of the Commissioner acting as such in relation to that matter, or that provision may operate, as the case may be, upon the opinion, belief or state of mind of that delegate acting as such.

(9) The provisions of this section shall be read and construed as being in addition to and not in derogation of or in substitution for those of section eighteen.

47I. (1) The Commissioner or any officer authorized by him in that behalf may at any reasonable time—

Investigations.
Inserted by
No. 9 of
1979, s. 11.

- (a) enter and remain in any premises at which, or at which he reasonably suspects, the business of selling petroleum products is carried on or which is, or which he reasonably suspects, is being used for the storage or custody of any accounts, records, books or documents relating to the sale or purchase of petroleum products;
- (b) take copies of, or extracts or notes from, any such accounts, records, books or documents;
- and
- (c) request any person found in or upon any premises used for the sale or purchase of petroleum products or on which petroleum products are stored for sale—
 - (i) to produce any accounts, records, books or documents which relate to, or which the Commissioner or an officer reasonably suspects relate to, the sale or purchase of petroleum products and which at the time of the request are in the possession or under the control of that person;
 - and
 - (ii) to answer any question with respect to any such accounts, records, books or documents or the sale or purchase of any petroleum products.

(2) A person shall not—

- (a) prevent or attempt to prevent the Commissioner or an officer from exercising any power conferred on him by subsection (1);
- (b) hinder or obstruct the Commissioner or an officer in the exercise of any such power;

Transport.

- (c) fail to comply with a request of the Commissioner or an officer under paragraph (c) of subsection (1); or
- (d) furnish to the Commissioner or an officer information which is false or misleading in a material particular.

Penalty: Two hundred dollars.

(3) A person is not guilty of an offence under paragraph (c) of subsection (2) by reason of his failure to answer any question if he proves to the satisfaction of the court that he did not know, and could not with reasonable diligence have ascertained, the answer to the question.

(4) A person is not excused from answering any question if required to do so under paragraph (c) of subsection (1) on the ground that the answer might tend to criminate him or make him liable to a penalty but the information furnished by him shall not be admissible against him in any proceedings, civil or criminal, except in proceedings for an offence under subsection (2).

Secrecy provisions.
Inserted by
No. 9 of
1979, s. 11.

47J. (1) The Commissioner may communicate—

- (a) to any officer administering any law of the Commonwealth relating to taxation or to any person authorized by any such officer;

or

- (b) to any officer of any State or Territory of the Commonwealth administering any law of that State or Territory relating to the licensing of persons to carry on the business of selling any petroleum products or to any person authorized by any such officer,

any information respecting the affairs of any person disclosed or obtained under the provisions of this Part.

(2) The Commissioner or any other person who is or has been employed in the administration of this Part shall not either while he is or after he ceases to be so employed—

- (a) either directly or indirectly, except in the performance of any function or duty in relation to this Part or in accordance with subsection (1), make a record of or divulge or communicate to any person any information acquired by him respecting the affairs of any other person in the course of that employment;
- (b) be required to produce in court any document in his custody in the course of his employment or to divulge or communicate to any court any matter or thing coming under his notice in the course of his employment except where it is necessary to do so for the purpose of carrying into effect the provisions of this Part.

Penalty: One thousand dollars.

47K. A person shall not on or after the 1st day of July 1979 carry on the business of wholesaling petroleum products unless he is the holder of a licence.

Petroleum product wholesalers to be licensed. Inserted by No. 9 of 1979, s. 11.

Penalty: One thousand dollars.

47L. (1) Subject to this Part any person may apply to the Commissioner for a licence.

Application for licences. Inserted by No. 9 of 1979, s. 11.

(2) An application for a licence shall be made in the form approved by the Commissioner.

(3) Subject to section forty-seven O the Commissioner shall not issue a licence to the applicant until the fee payable in respect of the licence has been paid.

Duration of
licence.
Inserted by
No. 9 of
1979, s. 11.

47M. A licence shall be in force on and from the day specified in the licence as the date from which the licence commences until, unless it sooner ceases to have effect, the 30th day of June next following.

Fees.
Inserted by
No. 9 of
1979, s. 11.

47N. (1) The fee payable for a licence that will have effect for any period ending on or before the 30th day of June 1980 shall be five hundred dollars together with—

- (a) an amount of nine tenths of a cent for every litre of motor spirit wholesaled by the applicant in the period commencing on the 1st day of April 1978 and ending on the 31st day of March 1979; and
- (b) an amount of three cents for every litre of diesel fuel wholesaled by the applicant in the period commencing on the 1st day of April 1978 and ending on the 31st day of March 1979 and used in propelling diesel engined road vehicles on roads.

(2) The fee payable for a licence that will have effect for any period after the 30th day of June 1980 shall be five hundred dollars together with—

- (a) an amount as prescribed for the purposes of this paragraph in relation to that period for every litre of motor spirit wholesaled by the applicant in the year ending on the 31st day of March last preceding the date on and from which the licence will be in force;
and
- (b) an amount as prescribed for the purposes of this paragraph in relation to that period for every litre of diesel fuel wholesaled by the applicant in the year ending on the 31st day of March last preceding the date on and from which the licence will be in force and used in propelling diesel engined road vehicles on roads.

(3) Where an application is made—

- (a) for a licence that will have effect for a period ending on or before the 30th day of June 1980 and the applicant did not carry on the business of wholesaling petroleum products during the whole of the period between the 1st day of April 1978 and the 31st day of March 1979; or
- (b) for a licence that will have effect for a period after the 30th day of June 1980 and the applicant did not carry on the business of wholesaling petroleum products during the whole of the period of twelve months ending on the 31st day of March last preceding the date on and from which that licence will be in force,

the fee payable by the applicant in respect of the licence shall be such amount as is assessed by the Commissioner as being just and reasonable in the circumstances of the case having regard to the petroleum products that would have been handled by the applicant had he been carrying on the business in respect of which the application for the licence was made during the whole of the relevant period, the relevant principles of determining fees under subsection (1) or (2) (whichever is applicable) and, where the application is made in respect of a licensing period that is less than one year, the period that the licence will be in force.

(4) Any petroleum products wholesaled for delivery and use outside the State shall be disregarded in determining the fees payable under this section.

(5) Where the Minister is satisfied that to require the payment in full of a fee assessed by the Commissioner in accordance with this section in respect of a licence would be unreasonable or inequitable having regard to the inability of the

applicant for, or holder of, the licence to adjust his business operations so as to take account of his obligation to pay licence fees under this Part, the Minister may reduce the fee.

(6) A reduction shall not be granted under subsection (5) after the 30th day of June 1980.

Fees payable by instalments in certain cases. Inserted by No. 9 of 1979, s. 11.

470. (1) The Commissioner may authorize an applicant for a licence to pay the licence fee payable in respect of that licence by instalments in accordance with this section.

(2) The Commissioner shall determine the instalments that shall be payable and the days on or before which the instalments shall be payable, and shall cause particulars thereof to be specified in the licence or in a notice in writing served on the licensee.

(3) If an instalment payable in respect of a licence is not paid on or before the day upon which it is determined to be payable by the Commissioner or if any additional amount that is due and payable under section forty-seven P is unpaid, the Commissioner may revoke the licence and thereupon the licence shall cease to be in force and the balance payable in respect of the licence shall become due and payable immediately.

(4) Notwithstanding subsection (3) where an instalment payable in respect of a licence is not paid within fourteen days of the day upon which it is determined to be payable by the Commissioner, the Commissioner may recover in any court of competent jurisdiction the balance due in respect of the licence as a debt due to the Crown by the person who was the holder of the licence at the time the instalment became payable.

47P. (1) Where, in the opinion of the Commissioner, the fee assessed in respect of any licence was assessed incorrectly, the Commissioner may at any time reassess the fee in accordance with the principles of assessing fees under section forty-seven N.

Adjustment
of fee.
Inserted by
No. 9 of
1979, s. 11.

(2) Where on a reassessment of a fee under subsection (1) the fee is reduced, the amount overpaid shall be refunded by the Commissioner in accordance with the provisions of subsections (3) and (4).

(3) Where—

- (a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the amount to be refunded shall be refunded to that person; or
- (b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the amount to be refunded shall be refunded to those persons in proportion to the periods, in days, for which they held the licence.

(4) Notwithstanding subsection (3), in a case where—

- (a) the licence has not ceased to be in force;
- (b) the Commissioner has authorized the applicant to pay the licence fee by instalments;
- (c) any instalment has not become due and payable; and
- (d) the instalments paid do not exceed the amount of the fee as reassessed,

a refund shall not be made to the holder of the licence in accordance with paragraph (a) or (b) of subsection (3) but in that case each of the remaining instalments payable in respect of the licence shall be reduced by an amount that bears to the amount that but for this subsection would be required to be refunded to that holder under subsection (3) the same proportion as one bears to the number of those remaining instalments.

(5) Where on a reassessment of a fee under subsection (1) the fee is increased, the additional amount payable by virtue of the reassessment shall be due and payable in accordance with the provisions of subsections (6) and (7).

(6) For the purposes of subsection (5) where—

(a) during the whole of the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by one person, the additional amount shall be due and payable within fourteen days after notice of the reassessment is served on that person; or

(b) during the period during which the licence in respect of which the licence fee was reassessed (whether or not the licence has ceased to be in force) has been or was in force, it was held by two or more persons, the additional amount shall be due and payable, within fourteen days after notice of the reassessment is served on them, by those persons in proportion to the periods, in days, for which they held the licence,

unless, in respect of that additional amount or any part of that additional amount so due and payable by that person or any of those persons, approval has been given under subsection (7) for the payment of that amount or part by instalments.

(7) A person by whom any additional amount or part is payable under subsection (6) may, within fourteen days after the service on him of notice of the reassessment by virtue of which the additional amount or part became so payable by him, apply to the Commissioner for approval to pay that amount or part by instalments, and if the Commissioner approves of the amount or part being so paid, it shall be due and payable by that person by such instalments payable at such times as are specified in the instrument of the Commissioner's approval.

(8) For the purposes of making the apportionment referred to in paragraph (b) of subsection (3) or (6), where the licence has not ceased to be in force the period, in days, for which the licensee who was the holder of the licence at the time of the reassessment has held the licence together with the unexpired period, in days, of the licence shall be deemed to be the period for which that licensee held the licence.

(9) Any amount which is due and payable by any person under subsection (6) or (7) and which is unpaid may be recovered by the Commissioner, as a debt, in any court of competent jurisdiction.

47Q. (1) A licensee and any person to whom the licensee proposes to transfer his licence may by application in the form approved by the Commissioner accompanied by the prescribed fee request the Commissioner to transfer the licence as on and from such day as is specified in the application.

Transfers.
Inserted by
No. 9 of
1979, s. 11.

(2) On receipt of the application and the prescribed fee and upon production of the licence the Commissioner shall endorse the transfer on the licence and the licence shall thereupon be deemed to be transferred.

Accounts
to be
kept by
licensees.
Inserted by
No. 9 of
1979, s. 11.

47R. (1) A person who carries on the business of wholesaling petroleum products shall keep such accounts, records, books and documents as may be prescribed containing such particulars as may be prescribed and shall preserve each of those accounts, records, books and documents for a period of five years after the last entry was made in it.

Penalty: One thousand dollars.

(2) This section shall not apply so as to require the preservation of any books, accounts or documents—

- (a) in respect of which the Commissioner has certified that preservation is not required; or
- (b) of a company which has gone into liquidation and which has been finally dissolved.

Power to
Commis-
sioner to
require
information.
Inserted by
No. 9 of
1979, s. 11.

47S. (1) The Commissioner may, by notice in writing, require any person—

- (a) to furnish him with such information as he requires; or
- (b) to attend and give evidence before him or before any officer of the public service employed in the administration or execution of this Part and authorized by him in that behalf,

for the purpose of inquiring into or ascertaining his or any other person's liability or entitlement under any of the provisions of this Part, and may require him to produce all books, documents and other papers whatsoever in his custody or under his control relating thereto.

(2) The Commissioner may require the information or evidence to be given on oath, and either orally or in writing, or to be given by statutory declaration and for that purpose he or the officer so authorized by him may administer an oath.

(3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

(4) Any person who fails or neglects duly to furnish any information or to comply with any requirement of the Commissioner under this section shall be guilty of an offence.

Penalty: Five hundred dollars.

47T. (1) A person who is dissatisfied with the assessment of any fee by the Commissioner may within forty-two days after being informed of the assessment or within such further time as the Commissioner may allow send by post to or lodge with the Commissioner an objection in writing stating fully and in detail the grounds upon which he relies.

Objections.
Inserted by
No. 9 of
1979, s. 11.

(2) The Commissioner shall consider the objection and either disallow it or allow it either wholly or in part and shall serve the objector by post or otherwise with written notice of his decision.

(3) A licence shall not be issued under this Part without the payment of the appropriate fees notwithstanding the making of any objection.

47U. (1) A person who is dissatisfied with a decision of the Commissioner on an objection made by him under section forty-seven T, may within thirty days after service on him of notice of that decision or within such further time as the Commissioner or Court may allow, in writing request the

Appeals.
Inserted by
No. 9 of
1979, s. 11.

Commissioner to treat his objection as an appeal and to forward it to the Supreme Court, and the Commissioner shall, within thirty days of the receipt by him of the request, forward it accordingly.

(2) The Supreme Court shall hear and determine an appeal forwarded to it under subsection (1), and for the purposes of this section—

- (a) the jurisdiction of the Supreme Court may be exercised by a Judge sitting in chambers; and
- (b) Rules of Court may be made for regulating the procedure and practice to be followed on an appeal forwarded to the Supreme Court under subsection (1).

(3) The appellant shall be limited, on the hearing of the appeal, to the grounds stated in his objection.

(4) If the appellant's liability or assessment has been reduced on objection, the reduced liability or assessment shall be the liability or assessment appealed against.

Offences.
Inserted by
No. 9 of
1979, s. 11.

47V. (1) Any person who makes or delivers an application or other document which is false in any particular or makes a false answer whether orally or in writing to any question duly put to him by the Commissioner, or any officer duly authorized by the Commissioner, acting pursuant to the provisions of this Part shall be guilty of an offence.

Penalty: Five hundred dollars.

(2) A person who in furnishing any information, giving any notification or keeping any record required to be kept by or under this Part makes or causes to be made any statement or representation that is false or misleading in a material respect is guilty of an offence.

Penalty: Five hundred dollars.

(3) Where a licensee is convicted of an offence against this section his licence shall cease to have effect.

47W. All moneys received by the Commissioner by way of licence fees under this Part shall be paid by him to the credit of the fund called the "Main Roads Trust Fund" kept under section thirty-one of the Main Roads Act 1930.

Payments to Main Roads Trust Fund. Inserted by No. 9 of 1979, s. 11. Amended by No. 25 of 1982, s. 16.

47X. The Governor may make regulations for or with respect to—

Regulations for the purposes of this Part. Inserted by No. 9 of 1979, s. 11.

- (a) the records to be kept by licensees;
- (b) the periods within which applications for licences are to be made;
- (c) the issue of duplicate licences;
- (d) fixing and imposing penalties of not more than one hundred dollars for any breach of the regulations; and
- (e) any other matter which is authorized or required to be prescribed or is necessary or convenient to be prescribed for carrying out the provisions of this Part.

47Y. Where before the coming into operation of section 10 of the Transport Amendment Act (No. 2) 1981 a payment was demanded or received by the Commissioner as being moneys payable by way of licence fees under this Part and the payment was not one which the Commissioner was authorized to require by virtue of this Act but which would have been lawful if section 10 of the Transport Amendment Act (No. 2) 1981 had been in force at the time of the demand or receipt, the payment shall be deemed to have been lawfully required and lawfully demanded or received by the Commissioner.

Validation of licence fees. Inserted by No. 56 of 1981, s. 11.

Part IIIB.
Inserted by
No. 70 of
1981, s. 3.

PART IIIB.—TAXI-CARS IN COUNTRY DISTRICTS.

Interpreta-
tion.
Inserted by
No. 70 of
1981, s. 3.

47Z. (1) In this Part unless the contrary intention appears—

“control area” means a part of the State to which the Taxi-cars (Co-ordination and Control) Act 1963 from time to time applies;

“district” means the district of a municipality;

“Local Court” means a Local Court established under the Local Courts Act 1904;

“municipality” has the same meaning as that expression has in, and for the purposes of, the Local Government Act 1960;

“operate”, as applied to a taxi-car, means—

(a) to drive; or

(b) to permit, cause or employ another person to drive,

that taxi-car; and cognate expressions shall be construed accordingly;

“owner”, as applied to a taxi-car, means a person being the sole, part or joint owner of the vehicle and includes a person having the use of the vehicle under an agreement for its hire, lease or loan under a hire purchase agreement and also includes a person repossessing or purporting to repossess, the vehicle under any such agreement;

“subsection” means a subsection of the section wherein the term is used;

“taxi-car” means a vehicle, not being an omnibus within the meaning of the Road Traffic Act 1974 which—

(a) is equipped to carry not more than 7 passengers; and

- (b) is used for the purpose of standing or plying for hire, or otherwise for the carrying of passengers for reward;

“taxi-stand” means a position or group of positions set apart by a competent authority, by means of a sign on or near a road, for the standing of disengaged taxi-cars.

(2) In this Part unless the contrary intention appears a reference to “this Part” includes a reference to the regulations made under this Part.

(3) For the purposes of this Part, the term “carrying of passengers for reward” includes any case where the owner or driver of the vehicle used—

- (a) offers that carriage as an inducement in respect of an agreement for the provision of other services or goods; or
- (b) receives any consideration in respect of an arrangement whereby that carriage is effected or to which that carriage is related.

(4) For the purposes of this Part, the carrying of passengers—

- (a) into a district from a place outside that district; or
- (b) from within a district to a place outside the district on the return journey by a direct route to the place from which the passengers were brought into the district,

shall not be taken as operating within the district.

(5) For the purposes of section 49 in relation to this Part, the term “owner” in that section shall have the meaning that it has for the purposes of this Part.

Application
of Part.
Inserted by
No. 70 of
1981, s. 3.

47ZA. This Part applies only outside a control area.

Functions
of the
Commissioner.
Inserted by
No. 70 of
1981, s. 3.

47ZB. It shall be a function of the Commissioner to keep under continuous review in the public interest the conduct of the taxi-car industry outside a control area, to make recommendations to the Minister for amendments to this Part where required, and generally in the administration of this Part to initiate and implement such actions as will in the opinion of the Commissioner assist in providing an adequate and efficient taxi-car service to the public in areas outside a control area.

Delegation
to officers.
Inserted by
No. 70 of
1981, s. 3.

47ZC. (1) The Commissioner may—

- (a) delegate to any officer specified in the instrument of delegation, all or any of his powers and functions under this Part other than this power of delegation; and
- (b) vary or revoke any delegation.

(2) A function or power delegated by the Commissioner pursuant to subsection (1) may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) If the exercise of a power or the performance of a function in relation to a matter is dependent upon the opinion, belief, or state of mind of the Commissioner and that power or function has been delegated under subsection (1), that power or function may be exercised or performed by the delegate upon the opinion, belief, or state of mind of the delegate in relation to that matter.

(4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.

47ZD. (1) No taxi-car shall be operated within a district unless the owner is the holder of a taxi-car licence under this Part issued in respect of that vehicle for that district.

Taxi-cars
to be
licensed
under this
Part.
Inserted by
No. 70 of
1981, s. 3.
Amended by
No. 106 of
1981, s. 26.

(2) When first required to be licensed under subsection (1) a taxi-car is deemed, subject to the payment of any prescribed fees, to be so licensed, if it is immediately before the coming into operation of the Transport Amendment Act (No. 3) 1981 licensed as a taxi-car under the Road Traffic Act 1974; but, on the expiry of the licence under that Act, that licence, if renewed, shall be renewed under this Part, and, in either case, the licence shall be taken to be subject to such conditions as are prescribed or the Commissioner may impose.

(3) The Commissioner may attach such conditions as he thinks fit to any licence granted or renewed under this section.

(4) Where a vehicle is owned by more than one person as owner or hirer or otherwise, the person who is deemed to be the owner pursuant to a notice given to the Traffic Board for the purposes of the Road Traffic Act 1974, shall be deemed also to be the owner for the purposes of this section unless the Commissioner consents to another of such persons being deemed to be the owner for the purposes of this section.

(5) A person shall not, in any district or portion of a district, operate any taxi-car that is not licensed under this section for that district or portion of a district or in respect of which such a licence is not in force.

(6) Any person who contravenes, or who permits or suffers another person to contravene, this section commits an offence.

Penalty: For a first offence, \$80; for a second offence, \$200; and for a subsequent offence, \$400.

Drivers
to be
registered.
Inserted by
No. 70 of
1981, s. 3.

47ZE. (1) A person shall not drive a taxi-car within a district unless he is registered as a taxi-car driver under this Part and complies with the conditions of registration.

Penalty: \$100.

(2) When first required to be registered under subsection (1) a person is deemed, subject to the payment of any prescribed fees, to be so registered, if he is immediately before the coming into operation of the Transport Amendment Act (No. 3) 1981 licensed to drive a taxi-car under the Road Traffic Act 1974; but, on the expiry of the licence under that Act, that licence, if renewed, shall be in the form of registration under this Part, and, in either case, the licence or registration, as the case requires, shall be taken to be subject to such conditions as are prescribed or as the Commissioner may impose.

(3) The Commissioner may attach such conditions as he thinks fit to any registration granted or renewed under this section.

Regulations.
Inserted by
No. 70 of
1981, s. 3.
Amended by
No. 106 of
1981, s. 27.

47ZF. (1) Without limiting the generality of section 60 the Governor may make regulations—

- (a) with respect to the issue, renewal and transfer of, licences and the manner of applying therefor;
- (b) fixing the term of licences;
- (c) prescribing the conditions under which licences of any kind may be issued, renewed or transferred under this Part; prohibiting, controlling or regulating dealings of any kind whatsoever with licences; and prescribing the qualifications of licensees;
- (d) providing that the Commissioner may attach such conditions as he thinks fit to the transfer of any licence under this Part;

- (e) with respect to the types of vehicles that may be licensed as taxi-cars, the pre-requisites for licensing and the construction of, minimum seating accommodation requirements, and equipment, including internal fittings and decorations, required or permitted to be carried on vehicles that may be licensed as taxi-cars;
- (f) with respect to the considerations to be taken into account by the Commissioner upon the issue, renewal or transfer of a licence under this Part;
- (g) with respect to the duties and obligations of holders of licences under this Part;
- (h) prescribing fees to be paid on the application for, issue, renewal or transfer of, or other dealing with, licences, or the examination or testing of any motor vehicle or any equipment carried on a motor vehicle, or for application for registration or renewal of registration as a taxi-car driver, or any other matter under this Part;
- (i) prescribing the characteristics of a private taxi-car; providing for the issue of licences for private taxi-cars and prescribing the conditions under which such licences may be issued and the qualifications of licensees of private taxi-cars;
- (j) providing the conditions upon which private taxi-cars may be operated;
- (k) providing for the cancellation or suspension of licences; and providing that the Commissioner may cancel or suspend any licence or may refuse to renew any licence under the circumstances prescribed by the regulations after such disciplinary procedures as are prescribed by the regulations;

Transport.

- (l) providing for an appeal to a Local Court from a decision of the Commissioner—
 - (i) suspending, cancelling or refusing to renew a licence; or
 - (ii) suspending, cancelling or refusing to renew the registration of a taxi-car driver,and providing for the conduct of such appeals;
- (m) fixing fares and other charges to be taken or made for the hire of taxi-cars, including the occasions and conditions upon which the carriage of passengers at separate fares may be required or authorized and the method of calculation of such separate fares;
- (n) prescribing the qualifications required for registration as a taxi-car driver; prescribing the method of applying for registration or renewal of registration as a taxi-car driver and the information to be supplied on such an application; with respect to the considerations to be taken into account by the Commissioner in relation to such an application; and providing for the suspension or cancellation of registration or the refusal to renew registration as a taxi-car driver, by the Commissioner;
- (o) providing for registers of taxi-cars and taxi-car drivers to be kept and prescribing the particulars to be included in such registers;
- (p) regulating the nature of engagement of taxi-cars;
- (q) regulating the conduct, behaviour and dress of drivers of taxi-cars in relation to the provision of taxi-car services;

- (r) prescribing the records to be kept and documents to be carried by owners, operators and drivers of taxi-cars;
- (s) providing for the condition of taxi-cars, the fitness, cleanliness, roadworthiness and mechanical standard to be observed in relation to taxi-cars and the examination of taxi-cars by the Commissioner or the Traffic Board constituted by the Road Traffic Act 1974 to ascertain the fitness of the vehicle or to check the equipment fitted to the taxi-car; and prohibiting the operation of a taxi-car which is unroadworthy;
- (t) providing that no alterations or modifications to a vehicle licensed as a taxi-car shall be made without the approval of the Commissioner;
- (u) prescribing means of identifying licensed taxi-cars and holders of taxi-car drivers' licences and the issue, use and withdrawal of number plates;
- (v) providing for the substitution of a vehicle for a taxi-car which is under repair and the conditions of such substitution;
- (w) prescribing specifications for taxi-meters; providing for the use and operation of taxi-meters; providing for the testing by officers or persons authorized by the Commissioner of taxi-meters; providing that the operator of a taxi-car shall maintain a taxi-meter; and prescribing offences relating to tampering with taxi-meters;
- (x) providing for the registration of radio facilities with the Commissioner and providing for the imposition of conditions on such registration by the Commissioner; providing for the application for the

registration or renewal of registration of radio facilities and the information to be supplied on such an application; fixing the term of registration of radio facilities; prescribing offences relating to radio facilities; and providing for the suspension or cancellation of, or the refusal to renew, the registration of radio facilities by the Commissioner;

- (y) providing for the registration and the cancellation of registration of taxi-meter mechanics and base radio operators with the Commissioner;
- (z) regulating the conduct of passengers in taxi-cars and for punishing persons evading or attempting to evade the payment of fares or charges therefor;
- (za) with respect to the establishment, in conjunction with the Main Roads Department or the appropriate local authority of stands for taxi-cars, providing for and controlling taxi-stands;
- (zb) providing for the delivering over and disposal of articles left in taxi-cars;
- (zc) with respect to—
 - (i) the powers of officers; and
 - (ii) the duties of members of the Police Force,

in relation to taxi-cars, taxi-car drivers, operators, passengers and taxi-meters; requiring persons to comply with directions given by officers or members of the Police Force;

- (zd) providing for disciplinary powers of the Commissioner over owners, operators and drivers of taxi-cars and owners and operators of radio facilities and the procedure relating to the exercise of such disciplinary powers;
- (ze) providing that a person who contravenes or fails to comply with any regulation commits an offence;
- (zf) providing that a person shall, if required by the Commissioner, attend at a place nominated by the Commissioner;
- (zg) providing for the procedure to be adopted on the recovery of penalties imposed under this Part or the regulations made under this Part;
- (zh) prescribing forms for use under this Part;
- (zi) prescribing a requirement for the furnishing of statutory declarations; and
- (zj) notwithstanding paragraph (b) of subsection (3) of section 60, prescribing penalties not exceeding \$200 for the breach of any regulation.

(2) Regulations may be made under this section—

- (a) so as to require a matter affected by them to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body;

- (b) so as to confer on a specified person or body or a specified class of person or body a discretionary authority; and
- (c) so as to provide that, in specified cases or a specified class of case or specified classes of cases whether on specified conditions or unconditionally, persons or things of a class or classes of persons or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified.

(3) In subsection (2) "specified" means specified in the regulations.

Powers of
a local
authority.
Inserted by
No. 70 of
1981, s. 3.

47ZG. (1) This section applies to any district other than a district in respect of which the Minister has published a notice under subsection (6).

(2) Notwithstanding this Part, the Commissioner shall not issue a taxi-car licence in a district to which this section applies without having first obtained the approval of the local authority or local authorities in whose district or districts the vehicle is to be operated as a taxi-car.

(3) A local authority in a district to which this section applies may, with the approval of the Governor, make by-laws regulating the fares for, and the driving and operation of, taxi-cars in its district and imposing penalties not exceeding \$200 for any breach thereof.

(4) Where there is any inconsistency between the regulations and any by-law made or preserved pursuant to this section, the regulations shall prevail and the by-law shall, to the extent of the inconsistency, be of no effect.

(5) Any by-laws made or continued under section 111 of the Road Traffic Act 1974 shall continue in force, but may be amended or repealed, as if made under subsection (3).

(6) The Minister may, at the request of a local authority, by notice published in the *Government Gazette*, declare that this section does not apply to a district specified in the notice, from a date specified in the notice or from the date of publication of the notice, and such a notice when so published is irrevocable.

(7) Where a notice is published pursuant to subsection (6) any by-laws made by the local authority for the district specified in the notice shall, by force of the notice, be deemed to be repealed on a date specified in the notice or on the date of publication of the notice.

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 authorized 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; No. 47 of 1980, s. 13.

49. (1) For the purpose of ascertaining whether the provisions of this Act or of any regulation made under this Act are being or have been contravened, a member of the Police Force or any person authorized in that behalf in writing by the Commissioner (whether generally or in any particular case) may—

- (a) require the owner and the driver of a vehicle, and any other person whom he has reasonable grounds to believe may have information as to the operation of any vehicle,—
 - (i) 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 a vehicle or its operation or carried on a vehicle;
 - (ii) to state his name and place of abode;
 - (iii) to permit an inspection to be made of any vehicle or of any load; or
 - (iv) to give information in respect of any load, its despatch and receipt, including the identity of the person who hired the vehicle for the carriage of that load and the identity of the consignor and consignee of any of the goods which that load contains;

- (b) at any time stop and detain any vehicle and inspect any goods which the load of that vehicle contains or any documents pertaining thereto;
- (c) having lawfully entered upon any premises where he has reasonable cause to suspect that any vehicle, goods or documents concerned in any offence or suspected offence or attempt to commit an offence may be found, thereon search for and inspect any such vehicle, goods or documents;
- (d) take copies of or extracts or notes from, any accounts, records, books or other documents, so inspected; and
- (e) be accompanied and assisted by an interpreter,

and a person disclosing information pursuant to a requirement under this subsection or permitting inspection of, or the taking of copies, extracts, or notes of, any document under this subsection does not thereby commit a breach of any duty of secrecy however imposed.

(1a) If a justice is satisfied on oath by a person who is a member of the Police Force or is authorized in writing by the Commissioner to exercise the power conferred by paragraph (c) of subsection (1) of this section that—

- (a) there is reasonable cause to suspect that any vehicle, goods or documents concerned in any offence or suspected offence or attempt to commit an offence may be found on any premises; and
- (b) the issue of the warrant is reasonably required for the purpose referred to in subsection (1) of this section,

the justice may by warrant under his hand in the prescribed form authorize that person, together with any other person named in the warrant or any member, or as the case may be, other member, of the Police Force, to enter the premises, if necessary by force.

(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 subparagraph (iv) of paragraph (a) 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.

Penalty: For a first offence, not more than two hundred dollars, for a second offence, not more than three hundred dollars, and for a third or subsequent offence, not more than five hundred dollars, but, in the case of a fourth or subsequent offence committed within a period of three years since the date of the last conviction under this subsection where it is shown that the accused has engaged in a course of conduct in contravention of this Act, not less than two hundred dollars.

(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) assault, threaten or intimidate or use improper or abusive language to any person so acting.

Penalty: Four hundred dollars, or imprisonment for a term not exceeding six months.

50. (1) The driver and the owner of a public vehicle, and any person who consigns or sends or causes to be consigned, sent or conveyed, or offers or agrees to consign, send or convey, any goods or passenger by a public vehicle that is operated where—

Penalties for operating unlicensed public vehicles. [S. 52.]
Amended by No. 51 of 1975, s. 7; No. 93 of 1979, s. 13; No. 47 of 1980, s. 14.

- (a) the vehicle is not appropriately licensed as such under this Act;
- (b) the vehicle being licensed, is carrying goods not authorized, or otherwise than authorized, by the licence; or
- (c) an appropriate Certificate of Authority issued under section forty-two C of this Act is not in force,

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

Penalty: For a first offence, not more than two hundred dollars, for a second offence, not more than three hundred dollars, and for a third or subsequent offence, not more than five hundred dollars, but, in the case of a fourth or subsequent offence committed within a period of three years since the date of the last conviction under this section where it is shown that the accused has engaged in a course of conduct in contravention of this Act, not less than two 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) Where—

- (a) the driver or the owner of a public vehicle is convicted of an offence under this section relating to the operation of the public vehicle; and

- (b) there is before the court by or before which the person is convicted a certificate purporting to be signed by an officer authorized in that behalf by the Commissioner specifying the amount of the licence fee that the Commissioner would have determined to be payable in respect of an appropriate licence authorizing such operation had such a licence been applied for and issued,

the certificate is conclusive evidence of the matter certified therein without proof of the signature of the officer purporting to have signed it or proof that the purported signatory was authorized in that behalf by the Commissioner, and the Court shall, in addition to any other penalty inflicted for the offence, order the person convicted to pay to the Commissioner the amount specified in the certificate.

(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 un-
licensed.
[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.

[52 repealed by No. 47 of 1980, s. 15.]

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.

Failure to comply with licence, etc. [S. 23.]

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 authorizes 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.]

Vicarious liability.
Inserted by No. 53 of 1977, s. 6.

55A. (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer, of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In the case of any prosecution in respect of an offence deemed to have been committed under the provisions of subsection (1) of this section it shall be a defence for any person who would otherwise be liable to the penalties prescribed for that offence to prove that neither he nor any agent or servant of his did, or knew of the doing of, any act that constituted the offence or can reasonably be regarded as having been the cause or amongst the causes of it, or omitted to do, or knew of an omission to do, any act the omission whereof constituted the offence or the doing whereof can reasonably be regarded as a precaution that would have prevented it.

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

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.

Affidavit evidence.
Inserted by No. 24 of 1976, s. 3.
Amended by No. 79 of 1976, s. 5;
No. 9 of 1979, s. 12.

56A. (1) Where a complaint is made of an offence under this Act other than an offence under Part IIIA and a summons appointing the time and place for the hearing and determination 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.

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

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.

(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.

Power to
revoke or
suspend
licence or
permit.
[S. 55.]
Amended by
No. 9 of
1979, s. 13;
No. 70 of
1981, s. 4.

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.

(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.

(7) In this section "licence" does not include a licence under Part IIIA or Part IIIB of this Act.

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.

Recovery of
penalties.
[S. 56.]

(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.

Regulations.
[Ss. 58 and
58A.]
Amended by
No. 79 of
1976, s. 7;
No. 53 of
1977, s. 7;
No. 70 of
1981, s. 5.

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.

(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;
- (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 or any Certificate of Authority under section forty-two C;
- (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 Act—

- (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

Protection
of Minister,
Commis-
sioner and
other
persons.
[S. 59.]

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.

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;
No. 9 of
1979, s. 14;
No. 93 of
1979, s. 14;
No. 47 of
1980, s. 16;
No. 8 of
1981, s. 7;
No. 25 of
1982, s. 17.

(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 other than moneys received by the Commissioner in respect of licences under Part IIIA;
- (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.

(2a) A reference in subsection (2) of this section to moneys received by the Commissioner includes a reference to moneys, if any, received by the Commissioner by way of *ex gratia* payments.

(3) There shall be paid out of the Fund—

- (a) the cost of the administration of this Act;
- (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;

Transport.

- (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 service or scheme for which the Commissioner has a responsibility, including the provision and maintenance of subsidies, facilities, signs, shelters and amenities relating thereto;
- (ca) such amount as is, in the opinion of the Treasurer of the State, necessary or expedient to maintain a trust fund to be held by the Commissioner and 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; 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 paid to the Main Roads Trust Fund kept under section 31 of the Main Roads Act 1930.

[(5) repealed by No. 8 of 1981, s. 7.]

(6) If at any time during any financial year the Treasurer is of opinion, after consulting with the Commissioner, that the moneys standing to the credit of the Fund are not sufficient to meet the whole of the cost of the administration of Part IIIA of this Act, the Treasurer shall in writing, from time to time, direct that such amount of the moneys

standing to the credit of the Main Roads Trust Fund kept under section thirty-one of the Main Roads Act 1930 as is sufficient for the time being to make up the deficiency shall be paid into the Fund.

(7) Effect shall be given to any direction of the Treasurer given under subsection (6) of this section.

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

FIRST SCHEDULE.

Section
33 (4).
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.

SECOND SCHEDULE.

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

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