

**ACTS AMENDMENT (PERTH
PASSENGER TRANSPORT)
ACT 1994**

No. 64 of 1994

AN ACT to amend the —

- *Transport Co-ordination Act 1966;*
- *Metropolitan (Perth) Passenger Transport Trust Act 1957; and*
- *Government Railways Act 1904,*

to enact new provisions in respect of passenger services by omnibus, ferry and train in the metropolitan area, to increase certain penalties, and for related purposes.

[Assented to 1 December 1994.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Perth Passenger Transport) Act 1994*.

Commencement

2. This Act comes into operation on such day as is fixed by proclamation.

PART 2 — TRANSPORT CO-ORDINATION ACT 1966

Principal Act

3. In this Part the *Transport Co-ordination Act 1966** is referred to as the principal Act.

[* *Reprinted as at 6 March 1987.*

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 215.]*

Section 4 amended

4. Section 4 (1) of the principal Act is amended —

- (a) in the definition of “ferry” by deleting “, other than the Metropolitan (Perth) Passenger Transport Trust”;
- (b) in the definition of “omnibus” by deleting “other than the Metropolitan (Perth) Passenger Transport Trust”; and
- (c) in the definition of “transport service” by deleting “sea” and substituting the following —

“ water ”.

Section 7D repealed and a section substituted

5. Section 7D of the principal Act is repealed and the following section is substituted —

“

Minister may provide facilities

7D. (1) The Minister may provide such facilities as in his opinion are necessary for the purpose of

facilitating the movement of vehicles in any part of the State in accordance with the terms and conditions imposed or agreed under this Act or under any other Act in relation to the operation of vehicles.

(2) The Minister may impose terms and conditions, including the payment of charges, for the use of any facilities provided under subsection (1).

(3) The Minister may dispose of facilities that in his opinion are no longer necessary for the purpose referred to in subsection (1).

(4) In this section —

“facilities” includes vehicles;

“manage”, in relation to facilities, includes —

- (a) grant a lease of and let on hire; and
- (b) enter into an agreement or arrangement for the management of facilities by some other person;

“provide” includes acquire, establish, maintain, manage and alter.

”.

Section 15B amended

6. Section 15B (2) (h) of the principal Act is amended by inserting after “this Act” the following —

“

and the functions of the Minister under Division 4 of Part II

”.

Section 16 amended

7. Section 16 of the principal Act is amended —

(a) in subsection (1) (a) by deleting “, where, in the opinion of the Minister, the requirements of a district are not adequately served by any form of transport”; and

(b) by inserting after subsection (4) the following subsection —

“

(5) Subsection (4) has effect subject to any agreement entered into by the Minister under section 18D.

”.

Division 4 inserted in Part II

8. After Division 3 of Part II of the principal Act the following Division is inserted —

“

Division 4 — Arrangements for the provision of omnibus, ferry and rail services in the metropolitan area

Interpretation

18B. (1) In this Division —

“metropolitan area” means the area from time to time defined under subsection (3);

“passenger services” means —

- (a) passenger services provided —
 - (i) over a fixed area or on a fixed route;
 - (ii) at fixed fares; and
 - (iii) with fixed timetables;

and

- (b) passenger services provided in circumstances prescribed by the regulations;

“train” means sets of rail cars for the carriage of passengers.

(2) References in this Division to passenger services by omnibus, ferry or train, or to any of those services, in the metropolitan area are to those services or that service by means of omnibuses, ferries or trains travelling only between places in the metropolitan area.

(3) The Governor may by order published in the *Gazette* define the boundaries of the metropolitan area for the purposes of this Division, and may in like manner alter those boundaries.

(4) The order made under subsection (3), and any alteration to that order, is a regulation for the purposes of, and is subject to, section 42 of the *Interpretation Act 1984*.

Function of Minister under this Division

18C. (1) It is a function of the Minister to facilitate and promote the provision of reliable, efficient and economic passenger services by omnibus, ferry and train in the metropolitan area, so far as in the Minister's opinion it is practicable to do so.

(2) The Minister may do all things necessary or convenient to be done for or in connection with the performance of the function described in subsection (1).

Agreements relating to omnibus and ferry services in metropolitan area

18D. (1) Where the Minister has conducted negotiations or received tenders under section 16 for the provision of particular passenger services by omnibus or ferry in the metropolitan area, or any part of that area, the Minister may enter into an agreement with a person as to —

- (a) the terms and conditions on which the services are to be provided; and
- (b) the matters set out in subsection (2).

(2) In an agreement under subsection (1) the Minister may agree —

- (a) to grant to the person a licence or licences containing particular conditions, restrictions, prohibitions and other provisions, including those of the kind described in section 17; and

(b) to exercise his powers under Part III in a manner that confers on the person the exclusive right to operate services specified in the agreement in the area so specified.

(3) The Minister may renew an agreement entered into under this section, including an agreement by way of renewal under this subsection.

(4) The Minister may give effect to an agreement entered into or renewed under this section.

Operation of metropolitan passenger rail services

18E. (1) The Minister and the Government Railways Commission —

(a) may enter into, and vary, an agreement as to the manner in which the Commission is to carry on and maintain passenger services by train in the metropolitan area;

(b) shall give effect to any agreement from time to time in force under paragraph (a).

(2) To the extent that any matter is not agreed under subsection (1), the Minister may direct the Government Railways Commission as to the manner in which the Commission is to carry on and maintain the services referred to in that subsection.

(3) The Government Railways Commission shall give effect to any direction under subsection (2).

(4) In this section “**Government Railways Commission**” means The Western Australian Government Railways Commission constituted by section 8 of the *Government Railways Act 1904*.

Assignment of benefit of agreement

18F. (1) The benefit of an agreement under section 18D may not be assigned without the consent of the Minister.

(2) When the benefit of an agreement is assigned, the assignee is bound, by force of this subsection, to perform the obligations which the assignor was bound under the agreement to perform.

(3) Any purported assignment in contravention of this section is void.

”.

Section 19 amended

9. Section 19 (1) of the principal Act is amended by deleting “other than vehicles operated under the *Metropolitan (Perth) Passenger Transport Trust Act 1957*”.

Section 60 amended

10. Section 60 of the principal Act is amended —

(a) by inserting after subsection (2) the following subsection —

“

(2a) Without limiting subsection (1), the Governor may make regulations with respect to services that are the subject of an agreement under section 18D, and in particular providing for what shall or shall not be done by persons —

(a) using or intending to use vehicles engaged in the provision of those services;

- (b) being in or near any place or thing used in the provision of those services;
- (c) otherwise in connection with such vehicles, places or things or their use.

”;

and

- (b) in subsection (3) (b) by deleting “\$50” and substituting the following —

“ \$500 ”.

Section 62 amended

11. Section 62 of the principal Act is amended —

- (a) in subsection (2) (b) by inserting after “62A (1) (a)” the following —

“ and 62B (2) (a) ”; and

- (b) by inserting after subsection (3) the following subsection —

“

(4) Notwithstanding subsection (2) or (3), there shall not be paid —

- (a) into the Fund, any moneys that under subsection (2) of section 62B are to be credited to the Metropolitan Passenger Transport Fund under that section; or

- (b) out of the Fund —
 - (i) any costs referred to in subsection (3) (a) of section 62B; or
 - (ii) any amounts for the purposes described in subsection (3) (b) of that section.

”.

Section 62B inserted

12. After section 62A of the principal Act the following section is inserted —

“

Metropolitan Passenger Transport Fund

62B. (1) There shall be established an account at the Treasury called the Metropolitan Passenger Transport Fund.

- (2) There shall be credited to that fund —
 - (a) moneys appropriated by Parliament for the purposes of that fund;
 - (b) moneys to be paid to that fund from the Transport Co-ordination Fund under section 62 or the Transport Trust Fund under section 62A;
 - (c) any moneys derived by the Minister from the performance of the Minister’s functions under section 18C; and
 - (d) any other moneys lawfully payable to that fund.

- (3) That fund shall be charged with —
- (a) the costs incurred by the Minister in performing the Minister's functions under section 18C; and
 - (b) such amounts as are, in the opinion of the Minister, necessary or expedient to be granted to defray any loss, operating cost or capital cost incurred by any person (including a State public authority) in the provision of metropolitan transport services.
- (4) The Metropolitan Passenger Transport Fund is part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.
- (5) In this section "**metropolitan transport services**" means passenger services by omnibus, ferry or train in the metropolitan area within the meaning given by section 18B.

**PART 3 — METROPOLITAN (PERTH) PASSENGER
TRANSPORT TRUST ACT 1957**

Principal Act

13. In this Part the *Metropolitan (Perth) Passenger Transport Trust Act 1957** is referred to as the principal Act.

[* *Reprinted as approved 3 March 1975.*
*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 134.]*

Long title amended

14. The long title to the principal Act is amended —

(a) by deleting “, **Maintaining, Protecting, and Managing,**” and substituting the following —

“ **and Managing** ”; and

(b) by deleting “**and of Providing Efficient Suburban Railway Passenger Services,**”.

Section 4 amended

15. Section 4 of the principal Act is amended by deleting the definitions of “Commission”, “Commissioner”, “railway”, and “suburban railway passenger services”.

Section 7 amended

16. Section 7 of the principal Act is amended by repealing subsections (1) and (2) and substituting the following subsection —

“

(1) The Trust shall consist of —

(a) a Chairman; and

(b) 6 other members,

all of whom shall be appointed by the Minister.

”

Section 8 amended

17. Section 8 of the principal Act is amended —

(a) in subsection (1) by deleting “other than the Commissioner”; and

(b) in subsection (2) by deleting “a member other than the Commissioner or”.

Section 8A amended

18. Section 8A of the principal Act is amended by deleting “other than the Commissioner”.

Section 9 amended

19. Section 9 of the principal Act is amended by repealing subsections (3) and (4).

Section 14 amended

20. Section 14 (1) of the principal Act is amended by deleting “other than the Commissioner”.

Section 15 amended

21. Section 15 of the principal Act is amended —

- (a) in subsection (1) by deleting “other than the Commissioner”; and
- (b) by inserting after subsection (1) the following subsection —
“

(1a) Where the Trust participates in a business arrangement under section 25 (1) (ec), subsection (1) (c) does not operate for the benefit of any other person or body except a body that is, whether directly or indirectly, wholly owned by the Trust.

”.

Section 23 amended

22. (1) Section 23 (1) of the principal Act is amended —

- (a) in paragraph (a) —
 - (i) by deleting “, maintain, protect,”; and
 - (ii) by deleting “service over streets in the metropolitan area, and if necessary by ferry services in that area” and substituting the following —
“

and ferry services in the metropolitan area

”;

and

- (b) by deleting paragraph (b).

(2) Section 23 (3), (4) and (5) are repealed and the following subsection is substituted —

“

(3) Nothing in this Act is to be read as conferring on the Trust any immunity from the requirements of Part III and section 50 of the *Transport Co-ordination Act 1966*.

”.

Section 25 amended

23. Section 25 of the principal Act is amended —

(a) in subsection (1) by inserting after paragraph (eb) the following paragraph —

“

(ec) power to participate, with the joint approval of the Minister and the Treasurer, in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement;

”.

and

(b) by inserting after subsection (1) the following subsection —

“

(2) In subsection (1) (ec) —

“business arrangement” means a proprietary limited company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;

“to participate” includes to form, promote, establish, enter, manage, dissolve, wind up, and to do anything incidental to participating in a business arrangement.

”.

Section 44 amended

24. (1) Section 44 (1) of the principal Act is amended by inserting after paragraph (a) the following paragraph —

“

(ab) money paid to the Trust under section 62B of the *Transport Co-ordination Act 1966*;

”.

(2) Section 44 of the principal Act is amended by repealing subsections (3) and (4) and substituting the following subsections —

“

(3) Moneys referred to in subsection (1) shall be credited to the Account.

(4) The Account may be operated on for the purpose of enabling the Trust to perform its functions.

”.

Section 77 amended

25. Section 77 of the principal Act is amended by deleting “one hundred dollars” and substituting the following —

“ \$500 ”.

Section 78A amended

26. Section 78A of the principal Act is amended by deleting the definitions of “Commission” and “Department”.

Section 78C amended and saving provision

27. (1) Section 78C (1) of the principal Act is amended by deleting “or officer or servant of the Department or Commission”.

(2) The amendment made by this section and section 26 does not affect any infringement notice given under section 78B of the principal Act before the commencement of those sections, and any such notice has effect as if this section and section 26 had not come into operation.

Section 79 repealed

28. Section 79 of the principal Act is repealed.

Section 80 amended

29. Section 80 (2) of the principal Act is amended —

- (a) in paragraph (c) (i) by deleting “one hundred dollars” and substituting the following —

“ \$500 ”;

- (b) in paragraph (c) (ii) by deleting “ten dollars” and substituting the following —

“ \$50 ”; and

- (c) in paragraph (ca) by deleting “twenty dollars” and substituting the following —

“ \$50 ”.

PART 4 — GOVERNMENT RAILWAYS ACT 1904

Principal Act

30. In this Part the *Government Railways Act 1904** is referred to as the principal Act.

[* *Reprinted as approved 27 October 1982.*
*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 91-2.]*

Section 13 amended

31. Section 13 (1) of the principal Act is amended by deleting “the Metropolitan (Perth) Passenger Transport Trust Act 1957” and substituting the following —

“ section 18E of the *Transport Co-ordination Act 1966* ”.

Section 23 amended

32. Section 23 (1) of the principal Act is amended by inserting after paragraph (28) the following paragraph —

“
(28a) prescribing offences and modified penalties,
not exceeding \$50, for the purposes of
section 53A;
”.

Section 53A inserted

33. After section 53 of the principal Act the following section is inserted —

“
Infringement notices

53A. (1) A reference in subsection (2), (3), (5) or (7) to an “**authorized person**” is a reference to a

person appointed under subsection (11) to be an authorized person for the purposes of the subsection in which the term is used.

(2) An authorized person who has reason to believe that a person has committed a prescribed offence against this Act or the by-laws, other than a by-law made under section 23 (23b), may, at or about the time the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

(3) An infringement notice under this section shall be in the prescribed form and shall in every case —

- (a) contain a description of the alleged offence;
- (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorized person within a period of 28 days after the giving of the notice; and
- (c) inform the alleged offender as to who are authorized persons for the purposes of receiving payment of modified penalties.

(4) In an infringement notice under this section the amount specified as being the modified penalty for the offence referred to in the notice shall be the amount that was the prescribed modified penalty under section 23 (1) (28a) at the time the alleged offence is believed to have been committed.

(5) An authorized person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

(6) Where the modified penalty specified in an infringement notice under this section has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn, the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(7) An authorized person may, whether or not the modified penalty has been paid, withdraw an infringement notice under this section within 28 days after the giving of the notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.

(8) Where an infringement notice under this section is withdrawn after the modified penalty has been paid, the amount shall be refunded.

(9) An amount paid as a modified penalty shall, subject to subsection (8), be dealt with as if it were a penalty imposed summarily under the *Justices Act 1902*.

(10) Payment of a modified penalty shall not be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

(11) The Commission may, in writing, appoint persons or classes of persons to be authorized persons for the purposes of subsection (2), (3), (5) or (7) or for the purposes of 2 or more of those subsections, but a person who is authorized to give infringement notices

under subsection (2) is not eligible to be an authorized person for the purposes of any of the other subsections.

(12) The Commission shall issue to each person who is authorized to give infringement notices under this section a certificate stating that the person is so authorized, and the authorized person shall produce the certificate whenever required to do so by a person to whom he has given or is about to give an infringement notice.

”