

GOVERNMENT RAILWAYS

No. 93 of 1978.

AN ACT to amend section 1 and Part IV of the
Government Railways Act, 1904-1977.

[Assented to 17th November, 1978.]

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

1. (1) This Act may be cited as the *Government Railways Act Amendment Act, 1978.*

Short title
and citation.

(2) In this Act the Government Railways Act, 1904-1977, is referred to as the principal Act.

Approved for
Reprint 12th
June, 1973
and amended
by Act No.
94 of 1972
(as amended
by Act No.
19 of 1973)
and Acts
Nos. 66 and 73
of 1975,
27 of 1976 and
47 of 1977.

(3) The principal Act as amended by this Act may be cited as the Government Railways Act, 1904-1978.

Section 1
amended.

2. Section 1 of the principal Act is amended by deleting the passage "PART IV.—ACCOUNTS, ss. 54-61." in line eighteen and substituting the passage "PART IV.—FINANCE AND ACCOUNTS, ss. 53A-61."

Heading to
Part IV
amended.

3. The principal Act is amended by deleting the heading to Part IV thereof and substituting a new heading as follows—

PART IV.—FINANCE AND ACCOUNTS.

Section 53A
added.

4. The principal Act is amended by inserting immediately prior to section 54 a new section, to stand as section 53A as follows—

Funds of
the
Commission.

53A. The funds available to the Commission for carrying into effect this Act shall be such moneys as are from time to time appropriated by Parliament for the purposes, and such moneys as the Commission lawfully borrows or receives by way of grants or otherwise.

Sections
54A-54M
added.

5. The principal Act is amended by inserting after sections 54 the following new sections, to stand as sections 54A-54M, as follows—

Loans
Account.

54A. There shall be an account, to be known as the Western Australian Government Railways Commission Loans Account, maintained in the Treasury, which shall be operated in such manner as the Treasurer may approve, and into which shall be paid all moneys borrowed by the Commission under section 54B or under section 54F of this Act.

54B. (1) Subject to the provisions of this Act, in so far as may be necessary or convenient for the performance of its functions under this Act or any other Act administered by the Commission, the Commission may—

General
borrowing
powers.

- (a) on its own behalf, subject to the approval of the Minister and in accordance with the provisions of this paragraph—
 - (i) borrow moneys in ways additional to or other than those provided by section 54E or section 54F of this Act;
 - (ii) obtain the provision of credit in the normal course of business (whether or not such credit is to be secured); or
 - (iii) otherwise arrange for financial accommodation to be extended to the Commission,

upon such terms and conditions, and in such manner (being a manner which is accepted as appropriate for trading corporations generally in the normal course of business practice) as the Treasurer may, and is hereby authorised to, approve, whether in the State or elsewhere, and give and accept security therefor;

- (b) for the purposes of giving effect to the provisions of paragraph (a) of this subsection, draw, make, accept, endorse, discount, execute or issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments; and
- (c) with the approval of the Treasurer, pay moneys by way of brokerage for the making, procuring, negotiating, or obtaining the loan of any money borrowed, credit provided or financial

accommodation extended under the authority of this section, or in respect of any dealings relating thereto.

(2) The approval of the Treasurer shall be deemed to have been given to the exercise of the powers conferred by paragraph (a) of subsection (1) of this section in relation to any proposals or works in respect to which he has agreed in writing a financial programme with the Commission and the manner in which it is to be implemented in so far as those powers are exercised in accordance with and in the manner provided for in that programme, but in any other case such powers shall not be exercised except with the written approval of the Treasurer to the instrument by which the liability is incurred (which may if he thinks fit be given by the Treasurer in advance either in general terms in relation to specified circumstances or to a specified transaction).

(3) In relation to any approval of the Treasurer required by this section—

- (a) the Treasurer may by writing signed by him delegate all or any of the powers conferred upon him by this section, with the exception of this power of delegation, to the Under Treasurer or to any other officer of the Treasury;
- (b) the person to whom power is so delegated may exercise the power in the same manner and with the same effect as if the power were directly conferred upon him by this Act and not by delegation;
- (c) where the exercise of the power is dependent upon the opinion, belief, satisfaction or other state of mind of the Treasurer in relation to any matter, the power when delegated may be exercised by the delegate upon his opinion, belief, satisfaction or state of mind in relation to the matter;

- (d) a person who purports to exercise power pursuant to a delegation conferred under the provisions of this subsection is presumed to do so in accordance with the terms of the delegation in the absence of proof to the contrary; and
- (e) every delegation of power pursuant to the provisions of this subsection may be revoked wholly or partly by the Treasurer at any time, and no delegation shall prevent the Treasurer from exercising the power.

(4) Any moneys borrowed by, credit provided for, or financial accommodation extended to the Commission under this section may be raised or entered into, either in the State or elsewhere, as one loan or transaction or as several loans or transactions in such manner and within such period as the Treasurer may in writing approve, but the amount of the moneys so borrowed, credit provided or financial accommodation extended shall not at any one time exceed in the aggregate such amount as the Treasurer approves.

(5) The Commission shall use moneys borrowed, credit provided or financial accommodation extended under the power conferred by this section for such of the purposes of this Act or any other Act administered by the Commission as the Treasurer may in writing approve, and not otherwise.

54C. (1) Where prior to the execution of any proposed contract relating to moneys to be borrowed by, credit to be provided or financial accommodation extended to, the Commission, or of any guarantee or indemnity entered into by the Commission, the person for the time being holding or acting in the office of Under

Evidence of compliance with requirements of the Act, and the use of finance.

Treasurer of the State is satisfied that the Commission and the officers of the Commission have complied with the requirements of the Treasurer under this Act as to—

- (a) the terms and conditions applicable and the manner of implementation of the proposals;
- (b) the provisions of any relevant agreed financial programme;
- (c) the disclosure to the Treasury of relevant information;
- (d) the form and content of any security or any document required to be executed pursuant to this Act relating to the proposals,

and that the approvals and authorisations required by this Act in respect of that contract, guarantee or indemnity have been given he may by writing under his hand give a certificate, expressed to have been prepared in respect of the transaction in question and to be given for the purposes of this section, to that effect and any such certificate shall be conclusive evidence in any proceedings arising between the parties to that contract, guarantee or indemnity as to such of the requirements of this Act as are therein specified and of the compliance of the Commission with the requirements of the Treasurer as to the proposed contract, guarantee, or indemnity to which the certificate relates.

(2) A person who lends money, or provides credit or extends financial accommodation, to the Commission is not bound to inquire as to the purposes for which the Commission desires to obtain or obtains such money, credit or accommodation or as to the use to which it is put by the Commission.

54D. (1) The Treasurer is authorised to give a guarantee on behalf of the State in accordance with this section, and to make payment, repayment, or payment of interest accordingly.

Specific
State
guarantees.

(2) Where the Commission proposes to enter into any obligation, whether or not by way of borrowing, credit or financial accommodation and whether on its own behalf or on behalf of another, in the State or elsewhere, for the purposes of performing its functions and giving effect to its powers under this Act or any other Act, that obligation may be guaranteed by the Treasurer on behalf of the State in accordance with this section.

(3) The Treasurer shall not give a guarantee under this section unless or until—

- (a) the terms and conditions relating to the obligation and the manner in which it is to be entered into have been disclosed to and approved by the Treasurer;
- (b) the Commission gives to the Treasurer such security, if any, as the Treasurer may require;
- (c) the form of any security for the obligation to be entered into by the Commission and guaranteed under this section, and all other documents relating to that obligation, are approved by the Under Treasurer;
- (d) the Commission has obtained the approval in writing of the Minister to the Commission entering into the obligation and to the proposed guarantee; and
- (e) the giving of the proposed guarantee has been approved by the Governor.

Borrowing
power, from
Treasury
sources.

54E. (1) If the money standing to the credit of the Commission is insufficient at any time to meet expenditure incurred or proposed to be incurred by the Commission in the performance of its functions, the Treasurer, who is hereby authorised to grant the approval, may make, and the Commission may borrow, from the Public Account advances of such amounts as the Treasurer approves, on such conditions as to repayment and payment of interest as the Treasurer imposes.

(2) Where an advance is made under this section—

(a) the Commission shall repay the amount of the advance; and

(b) the Commission shall pay interest,

in accordance with the conditions imposed under subsection (1) of this section and shall comply with any other conditions so imposed.

Power of
Commission
to borrow on
debentures
or stock.

54F. (1) Subject to subsection (2) of this section, the Commission may at any time and from time to time with the approval of the Governor—

(a) borrow or reborrow moneys for the purpose of—

(i) raising funds required by the Commission for the effectual exercise by the Commission of the powers conferred by this Act; or

(ii) redeeming any loans owing by the Commission; or

(iii) paying the expenses incurred in the issue and creation of the debentures or inscribed stock,

by the issue and sale of debentures or by the creation, issue and sale of inscribed stock;

- (b) issue such debentures or inscribed stock in exchange for any debentures or inscribed stock issued in respect of moneys previously borrowed by the Commission and not repaid;
- (c) effect any conversion authorised by this section either by arrangement with the holders of the existing debentures or registered owner of inscribed stock, or by the purchase of the debentures or inscribed stock out of the moneys raised by the sale of debentures or inscribed stock, or partly in the one way and partly in the other.

(2) The Governor shall not approve of the borrowing by the Commission of moneys under the provisions of this section unless a proposal in writing showing—

- (a) the term and particulars of the proposed loan;
- (b) the rate of interest to be paid on that loan;
- (c) the purposes to which the money proposed to be borrowed is to be applied; and
- (d) the manner in which that loan is to be repaid,

is first submitted by the Commission to, and approved of by, the Treasurer on the recommendation of the Minister.

(3) The due repayment of the principal moneys and the payment of all interest secured by debentures or inscribed stock created or issued by the Commission under the provisions of this Act is hereby guaranteed by the Treasurer on behalf of the State.

(4) Any moneys to be borrowed by the Commission under and subject to the provisions of this section may be raised as one loan or as several loans—

- (a) by the issue of debentures with or without interest coupons attached;
- (b) by the creation and issue of inscribed stock to be called the “Western Australian Government Railways Commission Inscribed Stock”;
- (c) partly as provided by paragraph (a) and partly as provided by paragraph (b) of this subsection; or
- (d) in such other manner as may be prescribed or as the Governor may approve.

(5) Inscribed stock may be issued pursuant to this section from a registry maintained by the Commission in the State and not elsewhere, but may thereafter be dealt with, whether in the State or elsewhere in accordance with the provisions of regulations made under this Act.

(6) Regulations made under this Act may provide that the Commission shall have power to purchase its debentures or its inscribed stock or any share therein (including amounts not comprising a complete parcel) otherwise than for the purposes of redemption, and to re-sell or otherwise deal therein.

(7) All debentures and inscribed stock, respectively, issued or created pursuant to this section—

- (a) shall be in the prescribed form;
- (b) shall bear interest at such rate and be redeemable on such date and at such place as the Commission may, with the approval of the Governor, determine;

- (c) may with the consent of the holder or the registered owner thereof, as the case may be, be paid off at any time before the due date for repayment, at not more than the face value thereof; and
- (d) whether original or not shall rank *pari passu* in point of charge without any preference or priority one over another.

(8) Interest secured by any debentures or inscribed stock issued or created pursuant to this Act shall be payable at such periods, on such days and at such places as the Commission determines and thereon specifies.

(9) The Commission may, at the request of the holder of a debenture or of the registered owner of inscribed stock issued or created pursuant to this Act, in lieu thereof issue to him inscribed stock or debentures, as the case may be, in respect of the same loan, and of the same amount, and of the same currency, and bearing the same interest.

(10) The Commission may, with approval of the Treasurer, pay moneys by way of brokerage for the making, procuring, negotiating, or obtaining the loan of any money borrowed under the authority conferred by this section, or in respect of any dealings relating thereto.

(11) The Commission may, and shall if the Treasurer so directs, set aside half-yearly, by way of a sinking fund for the purpose of redeeming any loans raised by it pursuant to this section, an amount calculated at a rate approved by the Treasurer and sanctioned by the Governor and the moneys so set aside may be dealt with in the manner authorised by section 54M of this Act.

(12) When it is necessary to have resort to any sinking fund referred to in subsection (11) of this section for the purpose of paying off either the whole or any part of any loan in respect of which the fund is provided, the Commission may sell any securities in which the fund is invested, or may obtain an advance thereon from any bank or from the Treasurer.

(13) The Commission shall keep or cause to be kept a register of debentures and a registry of records to be called "stock ledgers" for the inscription of stock, and may appoint such registrars and agents as may be necessary for the conduct of transactions relating thereto in the State or elsewhere, and shall, as soon as practicable after the issue of any debenture or the creation and issue of any inscribed stock pursuant to this Act, cause to be made in the appropriate register or ledger an entry specifying the number, date and amount of the debenture or the names of the purchaser of the stock and the amount of stock purchased by him.

(14) Stock or any share therein shall be transferable in the manner prescribed by the regulations from one person to another by instrument in the form so prescribed and not otherwise.

(15) No notice of any trust, express, implied or constructive, shall be received by the Commission or by an officer of the Commission in relation to a debenture or inscribed stock issued or created pursuant to this Act, and the Commission or an officer of the Commission shall not be bound to see to the execution of any trust to which any debenture or inscribed stock may be subject.

(16) The receipt of the person in whose name stock stands in the stock ledger, or if it stands in the names of more persons than one the receipt of one of the persons named in the stock

ledger, shall be a sufficient discharge of the Commission for any interest payable in respect of the stock, notwithstanding any trusts to which the stock may then be subject and whether or not the Commission has had notice of the trusts, and the Commission shall not be bound to see to the application of the money paid upon such receipt.

(17) If stock is held in joint names and one or more of the registered owners of the stock dies, becomes bankrupt, insolvent or otherwise legally incapable, the receipt of any one of the other joint owners or survivors shall be a sufficient discharge of the Commission for any interest payable in respect of the stock, notwithstanding that a transmission has not been registered as required by this Act.

(18) A register of debentures or stock ledger kept for the purposes of this section, or a copy or extract therefrom certified to be true by the officer in whose custody the register or ledger is kept, shall be admissible as and is evidence of any matters required or authorised by or under this Act to be inserted in the register or ledger.

(19) Regulations made under this Act may make provision—

- (a) as to the rights of the bearer of any debenture issued under this Act, and as to the payment of interest coupons;
- (b) for the inspection of, and the supply of copies or extracts from, the register of debentures or stock ledgers, the replacement of lost or defaced debentures or certificates, and the destruction of discharged debentures;
- (c) for the inscription of stock and as to the registration of inscribed stock and the manner of dealing with each stock, including matters relating to transfers

and transmission otherwise than on transfer, and as to the closure of transfer books and ledgers;

- (d) as to the fees or charges payable in respect of such matters; and
- (e) generally, for the purposes of this section.

(20) The Commission shall use moneys borrowed under the power conferred by this section for the purposes approved by the Governor, and not otherwise.

(21) A person advancing money to the Commission and receiving in consideration of the advance a debenture or inscribed stock issued under this Act shall not be bound to inquire into the application of the money advanced or be in any way responsible for the non-application or misapplication thereof.

Trustee
investments
in
debentures,
etc.

54G. (1) Debentures and inscribed stock created or issued by the Commission under the provisions of this Act shall—

- (a) be securities authorised by the laws relating to the investment of trust moneys; and
- (b) have the status of Government securities within the meaning of any Act in force for the time being relating to the investment powers of persons, friendly societies, or other financial institutions.

(2) A trustee unless expressly forbidden by the instrument, if any, creating the trust may invest trust funds in his hands in such debentures or inscribed stock.

(3) Such debentures or inscribed stock shall be a lawful investment for moneys which a body corporate is authorised or directed to invest, in addition to any other investments expressly authorised for the investment of such moneys.

(4) A trustee or body corporate may pursuant to this Act convert such debentures in his or its hands into such inscribed stock.

54H. The due performance of a guarantee given by the Treasurer on behalf of the State under the authority of this Act, whether given pursuant to section 54D or to section 54F of this Act, is hereby authorised, and the due payment of moneys payable thereunder with all interest thereon shall be made out of the money referred to in section four of the Audit Act, 1904, as "Public moneys", and any sums received or recovered by the Treasurer from the Commission or otherwise in respect of payment so made shall be paid into the Public Account.

Guarantees,
generally.

54J. By virtue of this section any sum borrowed by the Commission, or any sum paid by the Treasurer under any guarantee given by him on behalf of the State, under section 54D or section 54F of this Act and shall be a floating charge secured upon the Account referred to in section 54A of this Act and the other assets of the Commission, and that Account and those assets are charged with the performance and observance by the Commission of the terms and the conditions of the borrowing and of such terms and conditions as the Treasurer may have imposed or approved in relation to any such guarantee.

Charge on
Loans
Account
and assets.

54K. Where by virtue of—

- (a) any provision of this Act, or
- (b) the provisions of any instrument entered into by the Commission with the approval of the Minister and in accordance with the requirements of this Act,

Property
vested in
Minister may
be charged
with
borrowings
of the
Commission.

the assets of the Commission stand charged as security for an obligation of the Commission, then the property vested in the Minister on behalf of Her Majesty pursuant to section four

of this Act shall by force of this section without further assurance be deemed to be assets of the Commission so charged accordingly and the Minister shall give effect thereto.

Power to
make
provision
to pay off
loans.

54L. For the purpose of making provision to pay off either the whole or any part of any loan raised by the Commission under the provisions of this Act or any other Act administered by the Commission, the Commission may, with the consent of the Governor, borrow or raise the necessary moneys in accordance with the powers conferred by this Act before the loan or part of it becomes payable.

Temporary
investment
of moneys.

54M. Any moneys borrowed by the Commission otherwise than from the Public Account may, until required by the Commission in connection with the exercise of its powers or the discharge of its duties, be temporarily invested in such categories of investment as the Treasurer may approve and all interest derived from such investment shall be paid to the credit of the Commission.
