

TRANSPORT COMMISSION.

No. 53 of 1977.

AN ACT to amend the Transport Commission Act, 1966-1976.

[Assented to 23rd November, 1977.]

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 *Transport Commission Act Amendment Act, 1977.*

Short title
and
citation.

(2) In this Act the Transport Commission Act, 1966-1976 is referred to as the principal Act.

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as approved
for reprint
21st June,
1977.

(3) The principal Act as amended by this Act may be cited as the Transport Commission Act, 1966-1977.

Long title amended.

2. The long title of the principal Act is amended

- (a) by deleting the words “establish a Commission”, in line one, and inserting in lieu thereof the words “provide for the appointment of a Commissioner”; and
- (b) by inserting immediately after the word “trade”, in line four the words “and to recommend the minimum rates of remuneration payable in respect of the operation of commercial goods vehicles pursuant to sub-contracts”.

Section 3 amended.

3. Section 3 of the principal Act is amended by deleting the reference “Ss. 33-42.”, immediately under the reference to Division 3 of Part III, and inserting in lieu thereof references as follows—

- (1) *Licensing.—Ss. 33-42.*
- (2) *Recommendations in respect of operation pursuant to sub-contracts.—Ss. 42A-42H.*

Subdivision (2) of Division 3 of Part III added.

4. Division 3 of Part III of the principal Act is amended—

- (a) by adding immediately above section 33 a heading as follows—
 - (1) *Licensing.* ; and
- (b) by adding at the end a subdivision as follows—
 - (2) *Recommendations in respect of operation pursuant to sub-contracts.*

Interpretation.

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

“authorised person” means a person who is authorised 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;

“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.

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.

Inquiries
and recom-
mendations
by the
Commis-
sioner.

(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.

Certificate of authority to operate from south of the 26th parallel to the north thereof.

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.

(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*.

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.

Further
functions
and powers
of the Com-
missioner.

(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 authorised person may request and receive from—

Information.

- (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) organisations 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.

Secrecy.

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—

- (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.

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.

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.

5. Section 52 of the principal Act is amended by adding after the word "licence" in line four, the words "or Certificate of Authority".

Section 52
amended.

6. The principal Act is amended by adding immediately after section 55 a section as follows—

Section 55A
added.

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.

Vicarious
liability.

(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.

7. Subsection (2) of section 60 of the principal Act is amended by adding immediately after the word "Act", in line two of paragraph (o) the passage "or any Certificate of Authority under section forty-two C".

Section 60
amended.