

WESTERN AUSTRALIA.

**GOVERNMENT RAILWAYS ACT  
1904-1982.**

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ARRANGEMENT OF SECTIONS.

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Approved for Reprint, 27 October 1982.

WESTERN AUSTRALIA.

# GOVERNMENT RAILWAYS.

## No. 23 of 1904.

(Affected by Acts Nos. 2 Edw. 7 No. 47, s. 96; 38 of 1920, s. 1; 26 of 1932, ss. 2 and 6; 38 of 1945, s. 2; 36 of 1959, s. 4; 47 of 1963, s. 12; 113 of 1965, s. 8; and 91 of 1966, s. 21.)

[As amended by Acts:

No. 29 of 1907,<sup>1</sup> assented to 20 December 1907;  
No. 56 of 1926, assented to 24 December 1926;  
No. 36 of 1933,<sup>2</sup> assented to 4 January 1934;  
No. 15 of 1939, assented to 22 November 1939;  
No. 72 of 1947, assented to 10 January 1948;  
No. 78 of 1948,<sup>3</sup> assented to 25 January 1949;  
No. 32 of 1951, assented to 19 December 1951;  
No. 86 of 1953, assented to 18 January 1954;  
No. 13 of 1954, assented to 14 September 1954;  
No. 73 of 1954,<sup>4</sup> assented to 14 January 1955;  
No. 61 of 1955, assented to 13 December 1955;  
No. 37 of 1957,<sup>5</sup> assented to 18 November 1957;  
No. 17 of 1958,<sup>6</sup> assented to 6 October 1958;  
No. 38 of 1958,<sup>7</sup> assented to 11 December 1958;  
No. 8 of 1959, assented to 8 September 1959;  
No. 55 of 1960, assented to 2 December 1960;  
No. 27 of 1963, assented to 13 November 1963;  
No. 54 of 1965, assented to 9 November 1965;  
No. 44 of 1967, assented to 21 November 1967;  
No. 61 of 1970, assented to 5 November 1970;  
No. 21 of 1971, assented to 1 December 1971;  
No. 72 of 1972, assented to 16 November 1972;  
No. 94 of 1972,<sup>8</sup> (as amended by No. 19 of 1973);  
No. 94 1973,<sup>9</sup> assented to 27 December 1973;  
No. 66 of 1975, assented to 7 December 1975;  
No. 73 of 1975, assented 14 November 1975;  
No. 27 of 1976,<sup>10</sup> assented to 9 June 1976;  
No. 47 of 1977, assented to 18 November 1977;  
No. 93 of 1978, assented to 17 November 1978;  
No. 38 of 1979, assented to 25 October 1979;  
No. 77 of 1980, assented to 5 December 1980;  
No. 12 of 1982, assented to 14 May 1982,  
and reprinted pursuant to the Amendments Incorporation Act 1938.]

<sup>1</sup> Came into operation on the passing of the Act with the exception of ss. 8, 9, 10 and 11 which came into operation on 16 October 1908. See *Gazette* 9/10/08, p. 2705.

<sup>2</sup> Came into operation on 12 February 1934. See *Gazette* 9/2/34, p. 143.

<sup>3</sup> Came into operation on 1 July 1949. See *Gazette* 1/7/49, p. 1410.

Section 6 of Act No. 78 of 1948 is as follows:—

General Amendments.

6. The principal Act is amended by—

- (a) substituting for the word "Commissioner" wherever it appears the word "Commission" and effecting consequential grammatical alterations;
- (b) inserting before the word "Board" wherever it refers to the "Appeal Board" constituted pursuant to the provisions of section seventy of the principal Act the word "Appeal."

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<sup>4</sup> Came into operation on 1 March 1955. See *Gazette* 18/2/55, p. 343.

<sup>5</sup> Sections 11 and 12 of Act No. 37 of 1957 are as follows:—

Validation.

11. Any act or thing done or purporting to have been done, at any time between the first day of August 1957, and the commencement of this Act, by the Commissioner acting or purporting to act as or for or on behalf of the Commission which would have been valid and lawful if duly authorized and done by a duly constituted Commission is deemed to be and to have been valid and lawful and is hereby authorized, ratified and validated.

Saving.

12. (1) The provisions of sections fifteen, sixteen and seventeen of the Interpretation Act 1918, apply in respect of any amendments effected by this Act as if the words "subject to section eleven of the Criminal Code" in line one of paragraph (e) of subsection (1) of section sixteen of the Interpretation Act 1918, were deleted and as if the passage "notwithstanding section eleven of the Criminal Code" were added after the passage "(as the case may be)" at the end of subsection (2) of section sixteen of that Act.

(2) The express inclusion by subsection (1) of this section of the application of the provisions of sections fifteen, sixteen as modified, and seventeen of the Interpretation Act 1918, does not exclude the application of any of the other provisions of that Act to this Act.

<sup>6</sup> Came into operation 23 October 1959. See *Gazette* 23/10/59, p. 2620.

<sup>7</sup> Came into operation 24 December 1958. See *Gazette* 24/12/58, p. 3372.

<sup>8</sup> Metric Conversion Act 1972-1973. The relevant amendments included in this reprint effective from 1 July 1973. See *Gazette* 29/6/73, p. 2496.

<sup>9</sup> Came into operation same date as No. 93 of 1973, i.e. 22 March 1974. See *Gazette* 22/3/74, p. 902.

<sup>10</sup> Came into operation 1 January 1977. See *Gazette* 31/12/76, p. 5128.

(In this reprint the numbering of parts, sections, etc., as adopted in the 1949 reprint is retained.)

**AN ACT to consolidate and amend the Law relating to the Maintenance and Management of Government Railways.**

[Assented to 16 January 1904.]

**BE** it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Government Railways Act 1904-1982*.

It is divided into Parts, as follows:—

PART I.—PRELIMINARY, ss. 1-7.

PART II.—DIRECTION AND MANAGEMENT OF THE WESTERN AUSTRALIAN GOVERNMENT RAILWAYS, ss. 8-12.

*Division 1.—The Western Australian Government Railways Commission, ss. 8-11.*

*Division 2.—Abolition of the body corporate by the name of the Commissioner and transfer of functions, powers, rights, benefits and obligations, s. 12.*

Short title and divisions. Amended by No. 93 of 1978, s. 2; No. 12 of 1982, s. 1. See marginal notes to ss. 8-12 post.

PART III.—THE DIRECTION, MANAGEMENT, MAINTENANCE, AND CONTROL OF THE WESTERN AUSTRALIAN GOVERNMENT RAILWAYS, ss. 13-53.

PART IV.—FINANCE AND ACCOUNTS, ss. 53A-61.

PART V.—LEASING RAILWAY PROPERTY, ss. 62-67.

PART VI.—SIDINGS, ss. 68-69.

PART VII.—MISCELLANEOUS PROVISIONS, ss. 70-98.

2. In this Act, if not inconsistent with the context—

“Charges” includes rates, fares, demurrage, storage, rents, fines, and other charges;

“Commissioner” means the Commissioner of the Western Australian Government Railways for the time being in office under this Act;

“Commissioner of Transport” means the Commissioner constituted as the Commissioner of Transport under the Transport Act 1966;

“Commission” means the body corporate by the name of The Western Australian Government Railways Commission, constituted under this Act;

“Department” means that branch of the public service employed in connection with Government railways;

“Goods” means goods, produce, merchandise, parcels, luggage, including passengers’ luggage, and chattels of any description, and includes minerals and live or dead animals;

“Liquor” has the same meaning as it has in the Liquor Act 1970;

Interpretation.  
Amended by  
No. 36 of 1933,  
s. 3;  
No. 72 of 1947,  
s. 3;  
No. 78 of 1948,  
s. 5;  
No. 37 of 1957,  
s. 2;  
No. 61 of 1970,  
s. 2;  
No. 77 of 1980,  
s. 2.

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“Minister” means the Minister for Railways, and includes any responsible Minister of the Crown administering this Act for the time being;

“Notice” means a statement conveying the general effect of a matter or thing done or intended to be done;

“Prescribed” means prescribed by by-laws under this Act;

“Public Notice” means a notice published in the *Government Gazette* or in a newspaper circulating in the locality in which the subject matter of the notice arises or to which it relates, or posted in a conspicuous place on any railway station in such locality;

“Publicly notified” means notified by public notice;

“Railway” or “Government railway”, except as hereinafter provided, means any railway belonging to Her Majesty in Western Australia which has been or may be hereafter declared open for traffic by notice in the *Government Gazette*, and includes—

- (1) all land belonging to Her Majesty upon which the railway is constructed, or which is or is reputed to be held or used in connection with or for the purpose of a railway; and also
- (2) all branch lines, sidings, buildings, erections, wharves, jetties, works, locomotives, motor cars, motor and other vehicles, rolling-stock, plant, machinery, goods, chattels, and other fixed or movable property of every description or kind belonging to Her Majesty, and situate on such land,



or held or used or reputed to be held or used in connection with or for the purposes of a railway:

Provided that, for the purposes of sections sixteen and seventeen of this Act, "railway" means a railway as defined in section ninety-five of the Public Works Act 1902-1945,<sup>1</sup> the construction whereof has been authorized in accordance with section ninety-six of such Act, but which has not become a railway or a Government railway as herein defined;

See ss. 16 and 17 post.

"Road" includes street, right-of-way, and thoroughfare.

3. The Acts mentioned in the First Schedule are hereby repealed to the extent therein stated: Provided, nevertheless, as follows:—

Repeal. The First Schedule.

(1) Every proclamation, order, appointment, regulation, or by-law, and all charges made under the respective powers in that behalf contained in or conferred by any such repealed Act, and subsisting at the time of the commencement of this Act, shall be deemed to have been made under the corresponding powers contained in this Act, and shall so continue until revoked or altered under this Act; and

(2) All proceedings pending under any such repealed Act at the time of the commencement of this Act may be continued and completed in like manner in all respects as if no such repeal had been made.

4. (1) All Government railways shall be vested in the Minister on behalf of Her Majesty.

Government railways vested in Minister.

Amended by No. 78 of 1948, s. 7; No. 54 of 1965, s. 2.

(2) The Minister of the Crown to whom the administration of this Act is, for the time being committed by the Governor, shall be a body

See s. 14 post and cf. No. 41 of 1945, s. 3.

<sup>1</sup> Now Public Works Act 1902-1979.

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corporate under the name "Minister for Western Australian Government Railways" with perpetual succession and a common seal.

(3) All the property of The Midland Railway Company of Western Australia Limited that was transferred and assigned to the Minister on the first day of August, nineteen hundred and sixty-four, by the Company acting by its liquidator, shall be vested in the Minister on behalf of Her Majesty.

(4) Subject to subsection (5) of this section, the Minister may, in addition to any other powers conferred on him by this Act, sell, dispose of or otherwise deal with, on such terms and conditions as he thinks fit, any of the property referred to in subsection (3) of this section which is no longer required for the purpose of a Government railway.

(5) On the—

(a) payment to the Minister on behalf of the Commission, of such amount of money (if any) as is agreed upon by the Minister and the Minister to whom the administration of the Mining Act 1978, is for the time being committed by the Governor; and

(b) lodging by the Minister with the—

(i) Registrar of Titles, if the land on or below which the minerals are contained, is under the Transfer of Land Act 1893; or

(ii) Registrar of Deeds, if such land is not under that Act,

of a memorandum certifying that the payment has been made, or is not required, as the case may be,

all the right, title, estate and interest in and to all the minerals on or below the surface of all the land in the State granted or alienated at any time to The Midland Railway Company of Western Australia Limited, shall by force of this subsection cease to

be vested in the Minister and without the necessity of any transfer or conveyance in respect thereof shall become the property of the Crown, subject to any estates, interests or rights (if any) duly granted by that Company in respect thereof, and subject to such estates, interests or rights, for the purposes of Part VII of the Mining Act 1904,<sup>1</sup> the land shall be deemed not to have been alienated in fee simple from the Crown before the first day of January, eighteen hundred and ninety-nine.

5. (1) The Minister may from time to time, by Order in Council published in the *Government Gazette*, declare that any branch, spur, or other railway shall be a district railway, or shall cease to be a district railway.

District Railways.  
Enacted by No. 29 of 1907, ss. 16-18.  
Amended and numbered 4A by No. 78 of 1948, ss. 2 and 3.  
Renumbered as s. 5 in 1949 reprint.

(2) The fact that a locomotive, whether attached to a train or not on a district railway or Government railway, is run tender first shall not be deemed evidence of negligence.

Exemption from liability.

(3) The Commission may, from time to time, make special by-laws for organizing, classifying, and paying the staff employed on or in connection with such district railways, and prescribing the terms of employment; and sections seventy-seven to eighty-four, inclusive, of this Act shall not apply to any person employed on or in connection with any such railway, unless such person is transferred from, or ordinarily employed on a Government railway which is not a district railway.

By-laws as to staff.

(4) Subject to the provisions of this section, the provisions of this Act shall apply to district railways.

Application.

6. No Government railway shall be declared open for traffic until it has been inspected by a person appointed by the Minister for that purpose, nor until such person has reported to the Minister that he has inspected such railway, and that the same may safely and conveniently be used for public traffic.

Inspection of railways before opening for traffic.  
No. 23 of 1904, s. 5.  
Renumbered s. 6 in 1949 reprint.

<sup>1</sup> Repealed by Mining Act 1978.

The requirements of this section shall be deemed to have been duly complied with in the case of every Government railway open for traffic at the commencement of this Act.

Certificate of Minister evidence of certain facts. No. 23 of 1904, s. 6. Renumbered s. 7 in 1949 reprint.

7. A certificate under the hand of the Minister that any specified land is included as portion of a Government railway, or that any Government railway is open for traffic, shall for all purposes be sufficient evidence of the fact.

PART II.—DIRECTION AND MANAGEMENT OF THE WESTERN AUSTRALIAN GOVERNMENT RAILWAYS.

*Division 1.—The Western Australian Government Railways Commission.*

Commission. Sections 7-13 of No. 23 of 1904 repealed by No. 78 of 1948, s. 10, and new sections 7 and 8 substituted. Renumbered as ss. 8 and 9 in 1949 reprint. Amended by No. 86 of 1953, s. 2; No. 37 of 1957, s. 3; No. 17 of 1958, s. 3.

8. (1) For the purposes of this Act there shall be constituted a Commission under the name of The Western Australian Government Railways Commission.

Cf. No. 33 of 1928, s. 8. See ss. 12 (2) and 73 post.

(2) The Commission shall be the permanent head of the Department, and, subject to the Minister except as provided in section seventy-three of this Act, shall be responsible for the administration of this Act.

Constitution of Commission.

(3) The Commission shall consist of one person appointed by the Governor as Commissioner of the Western Australian Government Railways.

Power for Governor to appoint Commissioner. Cf. Commonwealth Railways Act, s. 6.

(3a) The Governor may appoint a fit and proper person to be Commissioner, and may, without prejudice to the exercise of any power conferred by subsection (10) of this section, on the happening of any vacancy in the office, appoint a fit and proper person to the vacant office.

[(4) *Repealed by No. 37 of 1957, s. 3.*]

[(5) *Repealed by No. 37 of 1957, s. 3.*]

[(6) *Repealed by No. 37 of 1957, s. 3.*]

[(7) *Repealed by No. 37 of 1957, s. 3.*]

(8) (a) If the Commissioner—

Circum-  
stances in  
which office  
of Commis-  
sioner  
becomes  
vacant.

(i) is absent from his duties for a period of at least one month without the consent of the Minister;

(ii) becomes of unsound mind, or is declared, under the provisions of any law for the time being relating to mental infirmity, incapable of managing his affairs;

(iii) becomes bankrupt or avails himself as a debtor of any law for the relief of bankrupt debtors;

(iv) resigns, subject to acceptance of such resignation by the Governor, attains the age of sixty-five years, or dies;

(v) except with the consent in writing of the Minister, in any wise participates or claims to be entitled to participate in any profit, commission, benefit, or emolument, arising directly or indirectly from any contract or agreement made by or on behalf of the Government, whether the profit, commission, benefit, or emolument, is that of, or derived by, a party to the contract or any other person;

(vi) is guilty of misbehaviour or of incapacity, his office on the Commission shall, subject to the succeeding paragraphs of this subsection, become vacant.

(b) In any of the cases referred to in subparagraphs (i), (iii), (v) or (vi) of the last preceding paragraph, the Commissioner shall be suspended from his office by the Governor and thereupon the Minister shall cause to be laid before each House

of Parliament, within six sitting days of the House next following the suspension, a full statement of the grounds of suspension.

(c) The Commissioner, when suspended from office pursuant to the provisions of this section, shall not be restored to office unless each House of Parliament, within twenty-one days after the day on which the statement has been laid before it, declares by resolution that he ought to be restored. If each House of Parliament within that time so declares, the Commissioner shall be restored by the Governor accordingly, but otherwise the Governor may remove him from office.

(d) In respect of the period of any suspension under this section, no salary or other remuneration will be payable to the Commissioner as such unless the Governor otherwise directs.

(e) The Commissioner shall not be removed from office except as hereinbefore provided.

(9) (a) A person who is appointed Commissioner shall hold office, subject to subsection (8) of this section, for the term for which he is appointed.

(b) A person shall not be appointed Commissioner for a term exceeding seven years.

(c) The Commissioner may from time to time be reappointed for any further term or terms not exceeding seven years for each term.

Tenure of office of Commissioner. Cf. No. 37 of 1957, s. 3 (e), and Commonwealth Railways Act, ss. 8 and 9.

Appointment of deputies.

(10) The Governor may appoint a person to act as the deputy of the Commissioner in his place and during his absence, incapacity or suspension, and may appoint a person to act temporarily as the Commissioner for a period not exceeding six months next following a vacancy in the office of Commissioner.

Validity of functions of deputies, etc.

(11) No appointment of, and no act, matter or thing done by any person as a deputy of the Commissioner or any person appointed to fill a vacancy in the office of Commissioner shall be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

(12) The Commissioner shall devote the whole of his time and attention to the duties of his office and be entitled to such remuneration, allowances and leave of absence as the Governor determines.

Full time duties and remuneration, etc.

(13) The Commissioner shall not engage in any business or occupation for remuneration, other than that of his office as Commissioner without the consent of the Governor.

Exclusive occupation in office.

[ (14) *Repealed by No. 37 of 1957, s. 3.* ]

[ (15) *Repealed by No. 37 of 1957, s. 3.* ]

[ (16) *Repealed by No. 37 of 1957, s. 3.* ]

[ (17) *Repealed by No. 37 of 1957, s. 3.* ]

[ (18) *Repealed by No. 37 of 1957, s. 3.* ]

(19) The Commission shall be a body corporate, with perpetual succession and a common seal.

Commission a body corporate. See ss. 35 and 36.

8A. (1) Subject to this Act and to the prior approval of the Minister, the Commission may—

Commission may join any body formed for the improvement of railways. Inserted by No. 47 of 1977, s. 2.

- (a) become a member of or shareholder in; and
- (b) contribute funds to,

any body whether incorporated or not (in this section referred to as “the body”) which

- (c) has its principal office within the Commonwealth; and
- (d) has among its principal objects the improvement of railway systems within the Commonwealth.

(2) The Commission may by instrument in writing authorize the Commissioner and any officer of the Commission to represent the Commission or

hold office on the body but any authorization given under this subsection is revocable at the will of the Commission.

(3) Subject to the Minister, the Commission may—

- (a) take part in any activities of the body;
- (b) carry out any function, investigation and research for or on behalf of the body either alone or in association with any other person appointed by the body; and
- (c) contribute to the cost of any activity carried on by the body or by any person on its behalf.

Commission may enter into arrangements for carrying on business. Inserted by No. 12 of 1982, s. 2.

**8B.** (1) Subject to this section, the Commission may participate in arrangements with any person for all or any of the purposes of acquiring or taking over any property, right, and liabilities of the Commission, or carrying out, control or management of any undertaking, works or business.

(2) For the purposes of subsection (1) of this section or in connection with or consequent upon any act or thing incidental thereto the Commission with the approval of the Minister—

- (a) where any participation is to be effected by means of the formation of a body corporate or as a member of a body corporate, may in relation thereto—
  - (i) acquire shares, by purchase or otherwise, in a body corporate formed or proposed to be formed within the territorial limits of the Commonwealth;
  - (ii) contribute funds to any such body corporate by purchase of shares, by way of loans or otherwise; and
  - (iii) dispose of shares in a body corporate;



- (b) where any participation is to be otherwise than in the manner referred to in paragraph (a) of this subsection, may participate in arrangements for the carrying out, utilization, control or management of any matter or thing either jointly or by one party on behalf of any other, or otherwise as may be agreed in the common interest, and for such purpose may on behalf of the joint venturers or any of them enter into contracts with any other authority, body or person and generally join in any act.

(3) Where pursuant to this section the Commission is a member of a body corporate or has entered into or participated in any arrangements with any person, the Commission may with the approval of the Minister dispose of any railway property or enter into any lease, contract or arrangement for the provision of any land, goods or services to the body corporate or to the joint venture for the purpose of facilitating the Commission's participation in or the business of the body corporate or joint venture.

(4) The Commission may guarantee to any person the repayment of any moneys advanced by that person to any person or body corporate.

(5) Loans and guarantees made and given under this section may be secured or unsecured.

(6) Where for the purposes of this section—

(a) the Commission proposes to make use of—

- (i) moneys borrowed by the Commission;
- (ii) credit obtained by the Commission;
- or
- (iii) financial accommodation extended to the Commission,

under this Act; or

(b) the Commission proposes to exercise any power conferred by this section to acquire or dispose of shares, contribute funds, or guarantee the repayment of moneys,

the Commission shall first obtain the approval of the Treasurer.

(7) Any land leased by the Commission pursuant to subsection (3) of this section is deemed to continue to be railway land for the purposes of this Act.

Protection of persons.  
See marginal note to s. 8, ante.  
Amended by No. 37 of 1957, s. 4.

9. No act, matter or thing done by the Minister or the Commissioner or any agent or servant of any of them, if done in good faith in the exercise of his powers or in the performance of his duties under this Act, shall subject him to any personal liability.

Penalty for participation in contracts.  
No. 23 of 1904, s. 14.  
Amended by No. 78 of 1948, s. 11.  
Renumbered s. 10 in 1949 reprint.  
Amended by No. 37 of 1957, s. 5;  
No. 17 of 1958, s. 4.

10. If without the consent in writing of the Minister the Commissioner in any wise participates or claims to be entitled to participate in any profit, commission, benefit, or emolument, arising directly or indirectly from any contract or agreement made by or on behalf of the Government, whether the profit, commission, benefit, or emolument, is that of, or derived by, a party to the contract or any other person, he shall be guilty of a misdemeanour and be liable to imprisonment for any term not exceeding three years.

And if any party to any such contract or agreement allows the Commissioner to participate in the profits thereof, or receive any commission, benefit, or emolument arising therefrom, he shall be guilty of a misdemeanour, and liable to imprisonment for any term not exceeding three years.

Effect of other Acts on acceptance of office.  
No. 23 of 1904, s. 15.  
Substituted by No. 78 of 1948, s. 12.  
Renumbered s. 11 in 1949 reprint.  
Amended by No. 36 of 1953, s. 3;  
No. 37 of 1957, s. 6.

11. (1) Acceptance of or acting in the office of the Commissioner by any person shall not of itself render the provisions of the Public Service Act 1904-1948,<sup>1</sup> the Superannuation Act 1871, or the Superannuation and Family Benefits Act 1938-1947,<sup>2</sup> applicable to him, nor affect the application of those provisions to him if they applied to him at the time of the coming into operation of the Government Railways Act Amendment Act 1948.

<sup>1</sup> Now the Public Service Act 1978.

<sup>2</sup> Now the Superannuation and Family Benefits Act 1938-1982.

[(2) *Repealed by No. 37 of 1957, s. 6.*]

No. 37 of 1957,  
s. 6.

*Division 2.—Abolition of the Body Corporate by the name of the Commissioner and Transfer of Functions, Powers, Rights, Benefits and Obligations.*

Division 2,  
and No. 23 of  
1904, s. 15A,  
inserted by  
No. 78 of 1948,  
s. 12.

12. (1) For the purposes of this section—

Definitions.

“appointed day” means the day fixed for the coming into operation of the Government Railways Act Amendment Act 1948, namely, the first day of July, one thousand nine hundred and forty-nine;

S. 15A was incorporated and renumbered s. 12 in 1949 reprint.

“function” includes power, right, benefit and obligation.

Amended by No. 86 of 1953, s. 4.  
Cf. No. 78 of 1948, ss. 2 and 12 (b) and *Gazette* of 1/7/1949, p. 1410.

(2) On the appointed day, by force of this section, the body corporate by the name of the Commissioner constituted pursuant to the provisions of the Government Railways Act 1904-1947, shall cease to exist, and thereafter the functions until then exercised and exercisable by that body corporate shall be transferred—

Abolition of “Commissioner” and transfer of functions.

(a) as to matters of policy, to the Minister;

See s. 8 (2) ante.

(b) as to matters of administration, subject to the provisions of this Act, to the Commission.

(3) If anything has been commenced by or under the authority of that body corporate by the name of the Commissioner before the appointed day in relation to the functions transferred by this section, the Commission, subject to the provisions of this Act, may carry on and complete it.

Transition provisions.

(4) If, at the appointed day, there is pending any legal proceeding to which that body corporate, by the name of the Commissioner is a party and which relates to the functions transferred by this section, the Commission may be substituted for the Commissioner in the proceedings, which shall not abate because of the transfer.

No abatement of legal proceedings.

Construction  
of docu-  
ments.

(5) In the construing, and for the purposes, of any Act, rule, regulation, by-law, judgment, decree, order, award, deed, contract or other document, whether of the same or a different kind as or from the foregoing, the Commission may be substituted for that body corporate by the name of the Commissioner, but so far only as may be necessary or convenient for the purposes of or in consequence of the transfer of functions by the provisions of this section.

Ratification.

(6) In order to resolve any doubt which there may be in respect of

- (a) the body corporate by the name of the Commissioner constituted pursuant to the Government Railways Act 1904-1947, having ceased to exist on the first day of July, one thousand nine hundred and forty-nine,

it is confirmed that the body ceased to exist on that day;

- (b) the respective functions mentioned in subsection (2) of this section, having been transferred on that day to the Minister and to the Commission respectively,

it is confirmed that those functions were so transferred on that day;

- (c) the validity of the exercise, between the thirtieth day of June, one thousand nine hundred and forty-nine, and the coming into operation of the Government Railways Act Amendment Act 1953, of those respective functions by the Minister or the Commission,

everything which has been done, or which purports to have been done by the Minister and the Commission during that period in exercise of those respective functions, is ratified as lawful and validated; or

- (d) the validity of anything which has been done or which purports to have been done during that period under subsections (3), (4) or (5) of this section,

everything which has been so done or which purports to have been so done is ratified as lawful and validated.

PART III.—THE DIRECTION, MANAGEMENT,  
MAINTENANCE AND CONTROL OF THE WESTERN  
AUSTRALIAN GOVERNMENT RAILWAYS.

13. (1) Subject to the provisions of this Act and of the Metropolitan (Perth) Passenger Transport Trust Act 1957, the Commission shall have the management, maintenance, and control of every Government railway.

Commission to manage railways.  
No. 23 of 1904, s. 16.  
Amended by No. 78 of 1948, s. 6.  
Renumbered s. 13 in 1949 reprint.  
Amended by No. 94 of 1973, s. 3; No. 38 of 1979, s. 2.

(2) For the purposes of the construction, operation, alteration, improvement, management, maintenance, or control of any railway subject to this Act, the Commission may—

- (a) purchase, hold, take on lease, exchange or otherwise acquire, sell, lease or otherwise dispose of, and deal in, real and personal property; and
- (b) enter into, assign and novate contracts, and execute all such instruments,

as may be required for those purposes.

14. The Commission, with the approval of the Minister, may make additions and improvements to any railway, and, in the performance of such duty, shall have the powers, and be subject to the liabilities, of the Minister under the provisions of the Public Works Act 1902-1945.<sup>1</sup>

Additions and improvements.  
No. 23 of 1904, s. 17.  
Amended by No. 36 of 1933, s. 4; No. 78 of 1948, s. 6.  
Renumbered s. 14 in 1949 reprint.  
See s. 4 (2) ante.

15. Without in any way limiting the powers conferred by the Public Works Act 1902-1945,<sup>1</sup> the Commission may, from time to time, for the purpose of protecting any railway, or preventing or lessening any risk of damage thereto, construct, maintain, alter, or reconstruct any embankment, groin, or

Power to protect railway.  
No. 23 of 1904, s. 18.  
Amended by No. 36 of 1933, s. 5; No. 78 of 1948, s. 6.  
Renumbered s. 15 in 1949 reprint.

<sup>1</sup> Now the Public Works Act 1902-1979.

other protective work on any land or on the bank of any river or stream, or divert, impound, or take away the water of such river or stream or alter the course of the same; and may also discontinue or abandon any such work as and when it thinks fit.

Powers of Minister under Public Works Act 1902, delegated to Commission, and Commission authorized to exercise such powers.  
Enacted by No. 36 of 1933, s. 6, as s. 18A.  
Amended by No. 78 of 1948, s. 6.  
Incorporated and renumbered s. 16 in 1949 reprint.  
See defn. "Railway" s. 2 ante.

16. (1) Where any railway is authorized in accordance with section ninety-six of the Public Works Act 1902-1945,<sup>1</sup> and the Minister, in exercise of the powers conferred upon him by the said Act, undertakes the construction of such railway, then, notwithstanding anything to the contrary contained in the said Act, or in any other Act, the Minister shall be deemed to have and shall by virtue of this section have authority to delegate to the Commission, and the Commission shall, subject to the approval of the Minister, have authority to exercise all and any of the said powers of the Minister, and to do, undertake, and carry out all works, acts, matters, and things necessary to be done or capable of being done in relation to the construction of the said railway, or in any manner incidental thereto, to the end that all that the Minister is authorized to do by the said Act in relation to such railway may be done to the same extent by the Commission on behalf of the Minister.

(2) In the exercise of the powers aforesaid the Minister or the Commission, as the case may be, may use and employ the whole or any portion of the employees and staff and property of the department, and may employ such other servants, workmen, contractors, and agents, and obtain and use such other plant, machinery, and property as may be necessary for such purpose.

(3) Nothing in this section shall be deemed to impose upon the Commission any liability whatsoever for any act or omission on its part or on the part of its servants, workmen, agents, or contractors in relation to the exercise by the Commission of any of the said powers under the authority of this section.

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<sup>1</sup> Now the Public Works Act 1902-1979.

17. Where a railway is in the course of construction and, although the same has not been completed, and, in accordance with section six of this Act, has not been declared open for traffic, the Minister is of the opinion that the said railway or a portion thereof may safely and conveniently be used to a limited extent for public traffic, it shall be lawful for the Commission, with the approval of the Minister, to use the said railway or portion thereof for traffic to the extent authorized by the Minister, and to make available the same for the carriage of passengers and goods, upon such special conditions as may be either generally or in any particular case declared by the Commission:

Railway under construction may be used for traffic in certain circumstances. Enacted by No. 36 of 1933, s. 6, as s. 18B. Amended by No. 78 of 1948, s. 6. Incorporated and renumbered as s. 17 in 1949 reprint. See defn. "Railway," s. 2 ante; s. 37 (3) post.

Provided that nothing in this section shall be deemed to make the Commission a common carrier or to impose upon it any of the obligations of a common carrier.

18. Notwithstanding anything to the contrary contained in any other Act relating to the erection of gates across roads, it is hereby declared that, with respect to every railway, the following special provisions shall apply:—

Gates and cattle-stops. No. 23 of 1904, s. 19. Amended by No. 78 of 1948, s. 6. Renumbered s. 18 in 1949 reprint. Amended by No. 94 of 1972, s. 4 (as amended by No. 19 of 1973.)

- (1) Where a railway crosses any road on a level the Commission may erect and maintain gates across such road on each side of the railway, and may keep such gates closed, except when foot-passengers, horses, cattle, carts, carriages, and other vehicles passing along such road shall have to cross the railway and may safely do so.
- (2) It shall not be lawful, without the consent in writing of the Commission, to erect or maintain across a road, where such road crosses any line of railway on the level, any gate within forty metres of the middle line of such railway.
- (3) The Commission may agree with the local authority having the control of such road to allow any such gate to be erected or

maintained, under such conditions as, in the interests of public safety, it thinks fit to impose.

- (4) The Commission may require any such gate, whether erected before or after the passing of this Act, to be removed if cattle-stops are provided at such level crossing.
- (5) At level crossings where there are cattle-stops it shall not be lawful to erect or maintain gates so as to enclose the railway, without the consent in writing of the Commission.
- (6) If any gate is hereafter erected in breach of this Act, then, irrespective of all other liabilities to which the person or local authority erecting the same is thereby exposed, the same may, at the cost and expense in all things of such person or authority, be at any time removed by the Commission without any notice.
- (7) With respect to every such gate as aforesaid which is in existence at the time of the coming into operation of this Act, it shall be the duty of the person or authority which erected the gate to remove the same within forty-eight hours after notice in writing so to do from the Commission; and if default is made in removing the same in terms of such notice, then the gate shall be deemed to be erected in breach of this Act, within the meaning of the last preceding subsection hereof, and the provisions of that subsection shall apply accordingly.

Motive  
power.  
No. 23 of 1904,  
s. 20.  
Amended by  
No. 78 of 1948,  
s. 6.  
Renumbered  
s. 19 in 1949  
reprint.

**19.** The Commission may use on any railway locomotive engines consuming any kind of fuel, and may draw or propel thereby carriages, wagons, machines, appliances and plant of every kind.



20. The Commission may, with the consent of the Minister, use, in addition to or in substitution for any existing motive or traction power, any system of electric or other traction of which it may approve, and may maintain, repair, and use all works necessary for such system of electric or other traction.

Commission may use electric traction.  
No. 23 of 1904, s. 21.  
Amended by No. 78 of 1948, s. 6.  
Renumbered s. 20 in 1949 reprint.

21. (1) In addition to any other powers conferred upon the Commission it may, with the consent of the Minister—

Commission may use motor and other vehicles.  
Enacted by No. 72 of 1947, s. 4, as s. 21A.  
Amended by No. 78 of 1948, s. 6.  
Incorporated and renumbered as s. 21 in 1949 reprint.  
Cf. S.A. Act 1936, No. 2303, s. 101.  
N.S.W. Government Railways Act 1912-1930, s. 55.  
Vic. Railways Act 1928, No. 3759, s. 114.  
See defn. "Railway," s. 2 ante.

(a) construct, purchase and otherwise acquire and maintain any motor or other vehicle; and

(b) subject to the provisions of the State Transport Co-ordination Act 1933-1948,<sup>1</sup> and of the Traffic Act 1919-1948,<sup>2</sup> use them for the purpose of conveying passengers and goods on any public highway and on land referred to in paragraph (1) of the definition "Railway" or "Government railway" in section two of this Act.

(2) Such of the provisions of this Act and of the by-laws made under this Act as shall be capable of application to any of the matters referred to in the next preceding subsection or any matters incidental thereto shall apply *mutatis mutandis*.

(3) The power conferred upon the Commission by this Act to make by-laws for any subject, shall, so far as practicable, extend to and include power in the Commission to make by-laws for any like subject in regard to any matter referred to in subsection (1) of this section.

22. The Commission may, with the approval of the Minister, from time to time, by notice in the *Government Gazette*:

Commission may fix charges.  
Amended by No. 29 of 1907, s. 3;  
No. 78 of 1948, ss. 6 and 14;  
No. 55 of 1960, s. 2.

(1) Fix scales of charges to be paid—

(a) by persons carried on or using a railway; or

<sup>1</sup> Now State Transport Co-ordination Act 1981.

<sup>2</sup> Now Road Traffic Act 1974.

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- (b) for goods carried on a railway, or received into or on, or stored in or delivered from, any store, shed, yard, wharf, pier, or jetty in connection with a railway; or
- (c) by passengers failing to take out tickets at the booking office of the station whence they started, or failing to produce tickets on demand; or
- (d) by the consignors or consignees of goods for demurrage on the use of any rolling-stock; or
- (e) for the use of any cranes, hoists, or other machinery for loading and unloading goods; or
- (f) for the hire of locomotives or rolling-stock; or
- (g) for the use of weighing-machines;  
**or**
- (h) for the use by any vessel of any wharf, jetty, mooring, berthage, building, crane, or other appliances in connection with a railway; or
- (i) for goods loaded or unloaded from or into lighters, into or from ships lying at or adjacent to any wharf, pier, jetty, berthage, or mooring in connection with a railway; or
- (j) for goods received or delivered from or to any vessel lying at or adjacent to any such wharf, pier, jetty, berthage or mooring; or
- (k) for the carriage of mails and parcel post; or
- (l) for the passing of locomotives and rolling-stock over any railway; or
- (m) for the sale of electric current or power from any power station on any railway.

- (2) Fix special charges for the conveyance of specific goods, produce, or merchandise.
- (3) Fix special charges including differential charges in accordance with the risk the Commission undertakes for the carriage or storage of specific classes of goods which in its opinion are of a nature liable to loss or injury, or to cause injury, or for goods over and above a certain value. See s. 25 (2) post.
- (4) Impose such conditions and regulations with respect to any of the preceding matters as it deems advisable.

Such charges, conditions, and regulations may be fixed or imposed generally, or for any specified railway, or any part thereof:

Provided, however, that the Commission, or any officer of the Department duly authorized by the Commission, may from time to time fix special scales of charges to be paid in lieu of the ordinary charges upon special occasions, or for such times and in respect of such railways or parts of a railway as it thinks fit:

Provided also that the powers conferred upon the Commission by this section may, from time to time, be exercised by the Governor, and any charges, conditions, and regulations fixed or imposed by the Governor shall supersede the charges, conditions, or regulations fixed or imposed by the Commission.

23. (1) The Commission may, from time to time, make by-laws upon the following subjects:—

- (1) regulating the mode in which, and speed at which, engines and other rolling-stock are to be propelled or moved;
- (2) regulating the use of carriages by passengers, and the number of passengers to be carried in each carriage or compartment;

By-laws.  
Amended by  
No. 29 of 1907,  
s. 4;  
No. 78 of 1948,  
ss. 6 and 15;  
No. 55 of 1960,  
s. 3;  
No. 61 of 1970,  
s. 3;  
No. 73 of 1975,  
s. 2;  
No. 47 of 1977,  
s. 3;  
No. 38 of 1979,  
s. 3.

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- (3) imposing conditions upon which passengers' luggage will be carried;
- (4) regulating the loading and unloading of wagons and the weight they may carry;
- (5) regulating the weight to be carried in any sack, box, bale, or other package, and the size thereof, and imposing penal rates of charges for excess in respect of weight or size of package;
- (6) regulating the receipt, carriage, delivery of and other dealings with goods, the storing of the same, and the checking of luggage:

Provided that while regulations for the checking of luggage are in force, no liability shall be incurred by Her Majesty or the Commission in respect of luggage which has not been duly checked;
- (7) preventing any person affected with any infectious or contagious disease from travelling by railway, except under prescribed conditions;
- (8) prohibiting the carriage or conveyance of diseased or infected animals, or of animals, plants, fruit, or vegetable produce suspected of disease, except subject to prescribed conditions;
- (9) prohibiting the carriage of second-hand fruit-cases, or any cases or packages that may reasonably be supposed to have contained fruit, unless such cases are disinfected in accordance with the provisions of any Acts and regulations relating thereto;
- (10) preventing the smoking of tobacco or any other substance, and the committing of nuisances;

- (11) keeping accounts of all receipts and expenditure, and conducting the audit thereof;
- (12) regulating the traffic on roads and bridges used both for ordinary and railway traffic;
- (13) regulating the public or private traffic of persons, vehicles, or goods on roads, bridges, and subways across, over, or under any railway;
- (14) preventing the trespass of persons or animals on any railway or any part thereof;
- (15) regulating the admission of any vessels to any wharf, jetty, berth, or mooring connected with and forming part of a railway, and their usage of and removal from the same;
- (16) regulating the maintenance, usage, opening, and closing of all gates and slip-panels, cattle-stops, and fences;
- (17) regulating the manner, times, and places in and at which tickets of any kind shall be purchased by, issued to, used by, and delivered up by passengers;
- (18) facilitating and regulating the insurance of persons travelling on the lines of railway, by any accident insurance company now or hereafter to be formed;
- (19) regulating the mode in which, and the times within which claims for loss, non-delivery of, or damage to goods, including passengers' luggage, or in respect of any other cause of action relating to either goods including passengers' luggage or passengers, shall be made;

- (20) regulating the terms on which private sidings may be constructed and used, the rent thereof, and the manner in which the same may be worked;
- (21) regulating the hire, use, and detention of any locomotives or rolling-stock at such sidings, and the liability of persons hiring, using, or detaining the same for damage done thereto, or for the destruction or detention thereof;
- (22) providing for the grant of licences to porters and to the drivers of vehicles plying for hire within the precincts of any railway; prescribing the conditions of such licences (including the payment in each instance of a licence fee), and also of the transfer or forfeiture thereof; making similar provision for the licensing of vehicles plying for hire as aforesaid (including the payment in each instance of a licence fee), and the conditions subject to which such licences shall be held and may be transferred or forfeited; and providing also for the exclusion of any such licensed driver or vehicle from railway premises until there is room for his vehicle, and for the exclusion of all unlicensed porters or drivers and vehicles plying for hire as aforesaid;
- (23) regulating the admission to railway stations, offices, platforms, and premises of passengers going to or leaving the trains, or of persons having business at the station offices; limiting the time during which passengers and other persons may remain on railway stations, offices, platforms, and premises; excluding from stations, offices, platforms, and railway premises all persons not observing the by-laws, or not having business thereat; imposing such fees or tolls as it deems fit in order to give effect to this subsection;

- (23a) providing for areas on land which is or is reputed to be held or used in connection with or for the purpose of a railway, or which is vested in the Minister, to be set aside as vehicle parking or standing areas for use by—
- (a) officers and servants of the Department or Commission;
  - (b) persons on railway business;
  - (c) the public generally; or
  - (d) such persons or vehicles or classes of persons or classes of vehicles as may be prescribed;
- (23b) generally regulating the control, supervision and management of parking or standing areas set aside under by-laws made pursuant to paragraph (23a) of this section and in particular—
- (a) prescribing charges payable by any person using, or in respect of any vehicle occupying a parking or standing area and exempting any person or vehicle or class of person or class of vehicle from paying all or any of those charges;
  - (b) prescribing conditions under which and the period or periods of time during which a parking or standing area may be used or occupied;
  - (c) providing for the protection of parking and standing areas and all equipment pertaining to them against misuse, damage, interference or attempted interference by any person;
  - (d) regulating the parking and standing of vehicles in any parking or standing area and prohibiting any person

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from parking or standing any vehicle in a parking or standing area otherwise than in accordance with the by-laws;

- (e) exempting any person or vehicle or class of person or class of vehicle from complying with any by-law made pursuant to this paragraph prohibiting or restricting the parking or standing of vehicles generally or otherwise;
- (f) prescribing the method and the means by which any charges or penalties prescribed by any by-law made pursuant to this paragraph may or shall be paid and collected, or recovered;
- (g) prescribing the circumstances under which an officer or servant of the Department or Commission may remove a vehicle, or cause it to be removed, from a parking or standing area to a specified place, prescribing his further powers in relation thereto, prescribing the scale of charges to be paid to recover the vehicle from that place, and authorizing the Commission to hold the vehicle until the prescribed charges are paid;
- (h) prescribing, in respect of an alleged offence against any by-law made pursuant to this paragraph, the circumstances under which the owner of the vehicle is deemed to be the driver or person in charge of the vehicle at the time of the alleged offence;
- (i) prescribing the period of time within which a person, after being served with notice of an offence alleged to have been committed by him against any by-law made pursuant to this paragraph, may or shall pay to the



Commission the penalty or modified penalty prescribed for that offence, and the period within which a penalty is payable after receipt of notice;

- (j) prescribing the method of notifying a person alleged to have committed an offence against any by-law made pursuant to this paragraph of that alleged offence and how it may or shall be dealt with and prohibiting the removal by any person other than the driver of a vehicle in respect of which an offence against such a by-law is alleged to have been committed of any notice relating to the offence affixed to the vehicle or left in or on the vehicle by an officer or servant of the Department or Commission; and
  - (k) prescribing a modified penalty or modified penalties payable to the Commission by a person or one of a class of persons who does not contest an allegation that he committed any specified offence against a by-law made pursuant to this paragraph and providing that the due payment of a modified penalty is a defence to a charge of the offence in respect of which that modified penalty was paid;
- (23c) subject to subsection (2) of this section, for authorizing persons appointed by the Commission to remove into custody any vehicle left on a railway for a period in excess of seven days, for authorizing persons appointed by the Commission to use such force as is necessary to enter a vehicle so left for the purpose of removing it, for providing for the custody of vehicles so removed, for prescribing a scale of charges to be paid by the owner of such vehicle in order to recover the vehicle from

custody, for providing that where such a vehicle is not recovered from custody within a period of two months the Commission may sell or otherwise dispose of the vehicle, for providing that the proceeds of the sale of such a vehicle may be applied towards recouping the costs of removal, custody and sale of the vehicle, for providing that the costs of the removal, custody and disposal of such a vehicle (less the proceeds of its sale, if any) may be recovered from the owner of the vehicle in a court of competent jurisdiction, and for providing that where the proceeds of the sale of such vehicle exceed the costs of its removal, custody and sale the amount of the excess shall be paid to the owner of the vehicle, or where the identity or whereabouts of the owner is unknown, placed into the Miscellaneous Revenue Account of the Commission.

- (24) regulating the use of refreshment rooms and restaurant cars under the management and control of the Commission;
- (25) regulating the sale, supply, and consumption of liquor in railway refreshment rooms, and on trains, that are under the management or control of the Commission and restricting, to the extent specified in the by-laws, the taking of liquor onto, or the possession of liquor on, any train, or a train specified in the by-laws, that is under such management or control;
- (26) for organizing, classifying, and paying the staff employed on Government railways, and prescribing the terms of employment, or in any other manner affecting the duties of such employees, provided that such by-laws or regulations are in no way inconsistent with the terms of an award of The Western Australian Industrial Commission or any industrial agreement that may be in force;

(26a) prescribing the powers, authorities and duties of, and the form of authority to be furnished to, special constables appointed under this Act, and imposing obligations upon persons for the purpose of facilitating the exercise by special constables of such powers;

(27) for establishing voluntary superannuation, sick, death, insurance, or guarantee funds, and for the deduction of prescribed contributions thereto from the pay of such employees as give their consent thereto;

Inserted by  
No. 29 of 1907,  
s. 4, as  
(26) (a).  
Renumbered  
27 in 1949  
reprint.

(28) for the control, supervision and guidance of persons engaged in the management, maintenance and control of the Government railways, and for prescribing the form and manner of signing and executing documents to be made or issued under this Act and for the promulgation of all acts, matters and things necessary, expedient or convenient for carrying into operation or for facilitating the operation of this Act;

Inserted by  
No. 78 of 1948,  
s. 15, as  
(26) (a).  
Renumbered  
28 in 1949  
reprint.

(29) And generally for regulating the traffic on railways, and the conduct of all persons employed on or about the same or travelling or being thereon:

Formerly  
(27) and  
renumbered  
(29) in 1949  
reprint.

Provided that such by-laws may authorize any railway officer or any other person to do all such things, and to issue all such instructions and regulations, as may be deemed advisable in respect of any such subjects, and may provide that any act or thing shall be done with the approval or to the satisfaction of a specified person or class of persons and may confer a discretionary authority.

(2) By-laws made pursuant to paragraph (23c) of subsection (1) of this section shall provide that any vehicle removed pursuant to by-laws made under that paragraph shall not be sold unless and until—

(a) enquiries have been made as to the ownership of the vehicle; and

- (b) the owner has been notified in the prescribed manner of the Commission's intention to sell the vehicle and where the owner cannot be so notified notice of the Commission's intention to sell the vehicle has been published in a daily newspaper circulating throughout the State.

Provisions as to by-laws.  
Amended by No. 78 of 1948, s. 6;  
No. 55 of 1960, s. 4;  
No. 113 of 1965, s. 8;  
No. 21 of 1971, s. 2;  
No. 72 of 1972, s. 2;  
No. 77 of 1980, s. 3.

24. In respect to by-laws made under the last preceding section, the following provisions shall apply:—

- (1) No by-law shall have any force or effect unless it has been approved by the Governor and published in the *Government Gazette*.
- (2) All by-laws shall be laid before both Houses of Parliament within ten days after the publication thereof, if Parliament is then sitting, and, if not, then within ten days after the commencement of its next sitting.
- [ (3) *Repealed by No. 72 of 1972, s. 2.* ]
- (4) Any by-law published in the *Government Gazette* shall be evidence in all courts of the same having been duly made under this Act.
- (5) Any by-law may apply to railways generally, or to any particular railway or part of a railway.
- (6) Every contract between the Commission and any consignor or owner of goods, or passenger, shall be subject to the by-laws in force for the time being, and such by-laws shall be deemed part of the contract.
- (7) Any by-law relating to the conduct of any person employed in or about a railway may impose a penalty not exceeding two hundred and fifty dollars for any breach

thereof, and such penalty may be recovered by deducting the same from any salary or emoluments due or to accrue due to him:

Penalties recovered under this subsection may be applied in making good the damage caused by the wrongdoing or neglect of the person charged, and subject thereto shall be paid into an account to be called "The Railway Servants' Benefit Fund," and may be issued and paid in such manner as the Governor directs to or for the benefit of any persons employed on railways.

- (8) Any other by-law may impose a penalty not exceeding two hundred dollars for any breach thereof.

25. In respect to the receipt, custody, conveyance, and delivery of goods upon or from a railway, the following provisions shall apply:—

- (1) All goods received upon any railway shall, subject to any by-laws, conditions, or regulations in that behalf, be deemed to be in the custody of the Commission until delivered to the consignee thereof.

As to custody, carriage, and delivery of goods.  
Amended by No. 78 of 1948, s. 6;  
No. 55 of 1960, s. 5;  
No. 113 of 1965, s. 8;  
No. 77 of 1980, s. 4.

- (2) Subject to any by-law as to parcels, every person, before delivering any goods at any railway station for carriage, shall give to the officer receiving the goods a consignment note in a form approved by the Commission and containing the particulars prescribed, and the officer shall give a receipt for the same, and if such goods are goods for which special charges are fixed under paragraph (3) of section twenty-two, the consignment note shall contain a declaration of the nature and value of the goods. No person shall be entitled to sue or recover for any loss of or damage to any goods or for any delay in transit or delivery, unless such consignment note has been given, and such receipt obtained.

See s. 22 (3) ante.

(3) The Commission shall not be liable for any loss or damage to any animal carried on a railway beyond the sums hereinafter stated:—

- (a) For any horse, forty dollars;
- (b) For any neat cattle, per head, thirty dollars;
- (c) For any sheep, pig, or other small animal, per head, two dollars,

unless the person sending or delivering the same shall, in the consignment note, have declared them to be respectively of higher value than as above mentioned, and shall have paid in addition to the ordinary rate of charge the charge fixed by the Commission under section twenty-two of this Act for the extra risk.

The proof of the value of such animals, and the amount of injury done, shall in all cases lie upon the person claiming compensation for such loss or injury.

The Second  
Schedule.

(4) The Commission shall not be liable for the loss of or injury to any goods of the descriptions set forth in the Second Schedule, which shall have been delivered either to be carried for hire or to accompany the person of any passenger when the value of such goods in any one package shall exceed the sum of fifty dollars, unless at the time of the delivery thereof to the person authorized to receive the same to be carried on the railway, or, in case the same accompanies the person of any passenger, before such person commences his journey on the railway, the nature and value of such goods shall have been declared in writing by the person sending or delivering or accompanying the same, and, in addition to any ordinary charge, the charge fixed by the Commission under section twenty-two of this Act (if any) for the extra risk shall have been paid and a receipt given for the same.

26. The Commission may make special agreements in writing with any person—

Special agreements.  
Amended by No. 78 of 1948, s. 6.

- (1) For insuring any goods delivered on a railway against all loss or damage from any cause whatsoever;
- (2) For insuring the Commission against all liability in respect of any such loss or damage;

and, for the purposes of the premiums in respect of such insurance, may increase or diminish the charges payable on such goods.

26A. Notwithstanding the provisions of section twenty-two of this Act, the Commission may from time to time make special contracts with any person in relation to fares, charges and conditions with respect to the carriage of any passengers, goods or livestock.

Special contracts.  
Inserted by No. 55 of 1960, s. 6.

27. Nothing herein contained shall operate or be construed to subject the Commission to any liability in respect of any goods left on the premises of a railway, before or after transit, if, by virtue of any by-law, they are so left or deemed to be so left at the risk of the person leaving the same, or of the consignee or owner thereof.

Goods left at owner's risk.  
Amended by No. 78 of 1948, s. 6.

28. (1) Subject to the provisions of subsection (2) of this section, the Commission may, from time to time,—

Power to collect and deliver goods outside limits of railway.

- (a) Cause goods for conveyance by railway to be collected from places outside the limits of a railway;
- (b) Fix and define the limits within which such collection of goods may be made, and also the rates and charges to be paid therefor;
- (c) Cause to be delivered, at places outside the limits of a railway, goods carried on a railway:

Amended by No. 78 of 1948, s. 6;  
No. 66 of 1975, s. 2.

- (d) Fix and define the limits within which such delivery of goods may be made, and also the rates and charges to be paid therefor:
- (e) Do, execute, enter into, and perform all such acts, contracts, and things as it thinks necessary for the purposes of this section.

(2) No contract made by the Commission pursuant to the powers conferred by subsection (1) of this section the performance of which appears likely at the time of the execution of the contract to extend over a period of more than five years shall take or have effect unless—

- (a) being a contract the performance of which appears to be likely to extend for a period of twenty years or less, it is ratified by the Minister; or
- (b) in any other case, it is laid before each House of Parliament as though it were in fact a regulation to which the provisions of section thirty-six of the Interpretation Act 1918, applied and neither House of Parliament passes a resolution disallowing the contract, of which resolution notice is given, within fourteen sitting days (whether or not those days, or some of them, do not occur in the same session of Parliament or during the same Parliament as that in which the contract is laid before such House).

Open  
services.  
Inserted by  
No. 77 of 1980,  
s. 5.

28A. (1) In this section—

“service” means any service for the carriage of goods, by road or rail or both, provided by the Commission and any service incidental thereto for the collection, receipt, storage, handling, despatch, carriage and delivery thereof.

(2) In addition to any powers conferred on the Commission by this Act, wherever section thirty-four of the Transport Act 1966 applies, or



would apply if the carriage of the goods in question were not by rail, the Commission may, subject to this section, undertake to provide a service.

(3) Notwithstanding sections twenty-two and twenty-five of this Act, the charges applicable in relation to any service referred to in subsection (2) of this section shall be such as are determined by the Commission or any officer of the Department duly authorized by the Commission from time to time but so that such charges shall be not less than the amount required to compensate the Commission for the costs directly assignable to the service in question.

(4) The Commission shall not provide a service under this section involving the use of a road vehicle when other road transport is available to provide the service at an adequate standard and at reasonable cost.

(5) Subsection (4) of this section does not apply to or in relation to a service provided immediately before the coming into operation of section 5 of the Government Railways Amendment Act 1980 but the Minister may give directions that the provisions of that subsection apply to or in relation to a particular service and effect shall be given to that direction.

(6) Where a service provided under this section is a service not previously provided by it, the Commission shall, within fourteen days after the commencement of the service, submit to the Commissioner of Transport in writing particulars of such service.

(7) Where the Commissioner of Transport receives particulars of a service pursuant to subsection (6) of this section the Commissioner of Transport may do one or both of the following—

- (a) request further particulars of the service or other information that is relevant thereto;

(b) refer the particulars of the service together with any recommendation in relation to the provision of the service to the Minister, and the Minister may give such direction to the Commission as he thinks fit in relation to the service and effect shall be given to any such direction.

(8) Where the Commission provides any service under this section, before the Commission—

- (a) increases any charge in relation thereto;
- (b) downgrades a service; or
- (c) withdraws a service,

it shall give to the Minister fourteen days' notice of the proposed action and the Minister may give a direction to the Commission in relation thereto and effect shall be given to any such direction.

(9) The Commission shall not be deemed to be a common carrier in respect of a service provided under this section.

Penalty for giving false consignment note or way-bill. Amended by No. 113 of 1965, s. 8.

29. (1) If any person makes a false statement as to the nature, quantity, weight, measurement, or value of any goods delivered upon a railway in any consignment-note, way-bill, or other document which, under this Act, he is required to deliver in respect to such goods, he shall be liable to a penalty not exceeding one hundred dollars.

Extra charges also payable.

(2) If in any such document there is any understatement of the quantity, weight, measurement, or value of the goods, or any misdescription of their nature, the effect whereof, if undetected, might lead to their being charged for at less than the proper rate, then, in lieu of charges at the ordinary rate, and irrespective of any person's liability under the last preceding subsection hereof, and whether the understatement or misdescription is wilful or not, charges at a special rate, not exceeding double the ordinary rate, shall be payable in respect of the goods.

30. When goods have been received for carriage on a railway, such goods may be retained by the Commission until all charges in respect of such goods are paid, unless the Commission has entered into a special contract in writing by which such lien is waived.

Lien.  
Amended by  
No. 78 of 1948,  
s. 6.

31. If any person refuses or fails to pay, in respect of any goods, any charges imposed under this Act, the Commission may, after public notice, order any such goods, or, in case such goods have been delivered, then any other goods on the premises of the railway belonging to the same person, to be sold.

Goods may  
be sold on  
refusal to  
pay charges.  
Amended by  
No. 78 of 1948,  
s. 6.

32. (1) If any goods are left on a railway, and the owner thereof, or the person liable for the charges thereon, is not known, the Commission may cause it to be publicly notified that, unless in the meantime they are removed and the charges thereon paid, they will be sold upon a day named in such notice, being not less than one month from the publication thereof.

Goods left  
by unknown  
owner may  
be sold.  
Amended by  
No. 78 of 1948,  
s. 6.

(2) If the goods are not removed and the charges thereon paid before that day, then they may be sold.

(3) If any goods left on a railway are perishable, the Commission may direct the sale thereof forthwith without notice, and if such goods cause offence or create a nuisance may cause them to be destroyed at the expense of the owner.

33. The proceeds of any sale under either of the preceding sections shall be applied first in paying the said charges and the expenses of such sale (including all charges and expenses incurred in or about the storage, warehousing, and handling of the goods or otherwise however), and the balance if any, shall be paid over to the person entitled thereto upon his establishing his claim within three months after such sale; but unless such claim is so established, the amount shall be paid to the credit of the account for claims and compensation.

Application  
of proceeds  
of sale.

Conveyance of dangerous goods.  
Amended by No. 78 of 1948, ss. 6 and 16; No. 55 of 1960, s. 7; No. 113 of 1965, s. 8.

34. (1) No person shall have any right to carry or send by a railway any loaded firearm or other dangerous thing, or any goods which are, or by any by-law are declared to be, of a dangerous nature.

If any person sends or attempts to send by a railway, or carries or deposits, or permits to be carried or deposited on any railway, any loaded firearm or dangerous thing, or any package containing any such goods, without the consent in writing of an officer authorized to receive such goods, and without distinctly marking the contents on the outside of such package, that person shall be liable to imprisonment, with or without hard labour, for any term not exceeding six months, or to a penalty not exceeding two hundred dollars.

(2) The Commission and its officers may refuse to take any parcel which it or they may suspect to contain goods of a dangerous nature, or may require any parcel to be opened, so that the nature of the contents may be ascertained.

Actions by the Commission.  
Amended by No. 78 of 1948, s. 6.  
See s. 8 (19).

35. All actions, suits, claims, and demands of the Crown relating to any railway, or arising from the management, maintenance, or control thereof, may be brought, maintained, and enforced by and in the name of the Commission in any court of competent jurisdiction.

Actions against the Commission.  
Amended by No. 78 of 1948, s. 6.  
See s. 8 (19) and s. 23 (19).

36. All actions, suits, claims, and demands against the Crown relating to any railway, or arising from the management, maintenance, or control thereof, shall be brought, maintained, and enforced against the Commission, and not otherwise; and, subject to the limitations and provisions of this Act, the Commission may be sued in respect thereof in any court of competent jurisdiction.

Commission deemed to be common carrier.  
Amended by No. 36 of 1933, s. 7; No. 78 of 1948, ss. 6 and 17; No. 73 of 1954, ss. 5 and 8; No. 77 of 1980, s. 6.  
See s. 17 ante.

37. [(1) *Repealed by No. 73 of 1954, ss. 5 and 8.*]

[(2) *Repealed by No. 73 of 1954, ss. 5 and 8.*]

(3) Subject to sections seventeen and twenty-eight A of this Act, the Commission shall be deemed to be a common carrier and, except as herein provided, shall be subject to the obligations and entitled to the privileges of such carrier.

38. No action shall lie or be brought or continued against the Commission in respect of any injury to the person, unless the person injured submits himself to examination by a medical practitioner or medical practitioners appointed by the Commission, at all such reasonable times as the Commission may require.

Plaintiff in actions for personal injuries to submit to examination. Amended by No. 78 of 1948, s. 6.

[39. Repealed by No. 27 of 1963, s. 2.]

40. The Commission shall be under no liability—
- (1) For loss or damage to goods which are left at or consigned to any station, siding, or stopping place marked in the time tables or rate books as stations, sidings, or stopping places at which no officer is in charge, or for any personal injury to any person at any such station, siding, or stopping place; or
  - (2) To provide platform accommodation at any station, siding, or stopping place; or
  - (3) For personal injury to any passenger who enters or alights from, or attempts to enter or alight from a carriage when such carriage is not drawn up to the platform when such accommodation is provided.

No liability in certain cases. Amended by No. 29 of 1907, s. 5; No. 78 of 1948, s. 6.

41. If any person, not having lawful authority, or the written permission of the Commission, does or causes or procures to be done any of the following things:—

Penalties for injuries to railways. Amended by No. 78 of 1948, s. 6; No. 55 of 1960, s. 8; No. 113 of 1965, s. 8; No. 77 of 1980, s. 7.

- (1) encroaches on a railway by making any building, fence, ditch, or other obstacle thereon;
- (2) digs up, removes, or alters in any way the soil or surface of a railway;

- (3) fills up, diverts, alters, or obstructs any ditch, drain, or watercourse directly carrying water off a railway, or made to protect the same; or does any act whereby any such ditch, drain, or watercourse is stopped, or the natural flow of water therein is obstructed;
- (4) interferes with or diverts or digs any drain or ditch or watercourse so as to damage or injure a railway; or
- (5) fells or removes any tree, shrub, or timber growing on a railway,

he shall, in respect of each offence, be liable to a penalty not exceeding two hundred dollars for every day upon which such offence is committed or suffered to continue, and a further sum equal to the cost incurred in removing any such encroachment or obstruction, or in repairing any injury.

Penalties for grave offences on railways.  
Amended by No. 37 of 1957, s. 7; No. 55 of 1960, s. 9; No. 113 of 1965, s. 8; No. 94 of 1972, s. 4 (as amended by No. 19 of 1973.)

42. If any person does or causes or procures to be done any of the following things:—

- (1) unlawfully throws or puts any stone, gravel, or timber, or any substance, whether solid or liquid, or any other matter or thing on a railway;
- (2) does any act which obstructs or might obstruct the working of a railway, or endangers or might endanger the lives of persons travelling thereon;
- (3) drives or attempts to drive any vehicle or animal across a level crossing or elsewhere on a railway when an engine or any carriage or wagon on the railway is approaching and within 400 metres from such crossing, or where warning devices are provided, drives or attempts to drive any vehicle or animal across a level crossing

or elsewhere on a railway when those warning devices are operating to indicate that the vehicle or animal should not cross, and an engine or wagon on the railway is approaching the level crossing or other place;

- (4) places any rolling-stock or appliance on a railway, not having lawful authority so to do;
- (5) moves any part of the rolling-stock or appliances on a railway, or leaves the same on any part of a railway, not having lawful authority so to do;
- (6) moves or in any way interferes with any signals, points, or stop-blocks, or shows any signal likely to mislead;
- (7) removes from a railway or the railway premises any rolling-stock, tarpaulins, tools, appliances, or property of any kind vested in the Minister or in the possession, custody or control of the Commission, or permits any of such rolling-stock, tarpaulins, tools, appliances, or property to be unlawfully in his possession or on his premises;
- (8) cuts down, breaks, removes, or destroys any fence, building, or bridge, or any telegraph wire or post in or upon any railway;
- (9) attempts to do, or assists or aids in doing, any of the things mentioned in this section,

he shall, in respect of each offence, be liable to imprisonment with or without hard labour for any period not exceeding six months, or to a penalty not exceeding two hundred dollars, without in any way relieving him from any other liability to which he may be subject apart from this section, so that he is not twice punished for the same offence.

Offences on railways punishable by fine or imprisonment.  
Amended by No. 55 of 1960, s. 10; No. 113 of 1965, s. 8; No. 77 of 1980, s. 8.

43. If any person does or causes or procures to be done any of the following things:—

- (1) obstructs any officer or servant employed on any railway in the performance of his duty;
- (2) damages any railway, or any locomotive, carriage, wagon, rolling-stock, machinery, material, or thing used upon or belonging to any railway;
- (3) defaces the writing or printing on or attached to any board, or any notice authorized to be maintained on any railway, or on or in any railway carriage, rolling-stock, or railway station;
- (4) writes any indecent words or draws any indecent or obscene picture or representation on any part of a railway, or on any railway carriage or rolling-stock, or on any fences or buildings upon or adjoining any railway, or near to and conspicuous from any railway;
- (5) behaves in a violent or offensive manner to the annoyance of others, or is drunk, on any railway or railway premises or in any carriage thereon.

he shall, in respect of each offence, be liable to imprisonment, with or without hard labour, for any period not exceeding two months, or to a penalty not exceeding two hundred dollars.

Removal of passenger not paying proper fare.  
Amended by No. 78 of 1948, s. 18.

44. Any passenger who—

- (1) fails to produce a proper ticket and refuses to pay his proper fare on demand; or
- (2) travels in a railway carriage of a class superior to that for which he is provided with a ticket and refuses to pay the fare for the superior class on demand; or



- (3) travels in or enters a railway carriage set apart for any particular person or class of persons and refuses to quit the carriage when requested to do so; or
- (4) not having a sleeping car ticket, refuses to quit a sleeping carriage when requested to do so,

may be removed from a railway carriage by any officer or servant of the department or Commission, and prosecuted for such penalty as he may have incurred under this Act or the by-laws.

45. If any person—

- (1) alters any ticket with intent to avoid payment of the proper fare or any part thereof, or to mislead or deceive, or for the purposes of sale; or
- (2) sells or transfers, or offers for sale or transfer, any free pass, or permits any person other than the person to whom the same is issued to be in possession of or make use of the same, or travels or attempts to travel with any such free pass, not being the person entitled to use the same; or
- (3) sells or transfers, or offers for sale or transfer, a ticket or any portion of a ticket which has been used for the whole or any part of the journey for which the ticket was issued; or travels or attempts to travel with any such ticket, or portion of a ticket, sold or transferred by any person; or
- (4) sells or offers for sale any ticket or any portion of a ticket not being a person authorized or employed by the Commission for such purpose, or purchases or offers to purchase any ticket or any portion of a ticket from any person not employed by the Commission for such purpose; or

Penalties for offences relating to tickets, etc.  
Amended by No. 29 of 1907, s. 6; No. 78 of 1943, s. 6; No. 113 of 1965, s. 8; No. 77 of 1980, s. 9.

- (5) is brought before any two justices and charged with having or having had in his possession, either on his person or on or in any premises, any ticket or portion of a ticket which may be reasonably suspected of being unlawfully obtained, and does not give an account to the satisfaction of such justices how he came by the same,

he shall, in respect of each offence, be liable to imprisonment, with or without hard labour, for any period not exceeding six months, or to a penalty not exceeding two hundred dollars.

Penalty for travelling without payment of fare, etc.  
Amended by No. 55 of 1960, s. 11; No. 113 of 1965, s. 8; No. 77 of 1980, s. 10.

46. If any person, with or without intent to defraud,—

- (1) uses or attempts to use any ticket or free pass the time for the proper use of which has expired, or which has already been used to the full extent to which the holder is entitled to use it; or
- (2) not being the holder of a free pass for the purpose, travels or attempts to travel without having previously paid or tendered his fare; or
- (3) having paid his fare for a certain distance, or being the holder of a free pass for a certain distance, proceeds beyond such distance without having previously paid the additional fare for the additional distance, or, in the case of the holder of a free pass, without being previously duly authorized to proceed such additional distance without paying such additional fare; or
- (4) having paid his fare, or being the holder of a free pass for a certain class of carriage, travels by a superior class of carriage without paying or tendering the difference in fare; or

- (5) refuses or neglects to quit the carriage at the point to which he has paid his fare, or to which his free pass is available, or to which, being the holder of a free pass he has been duly authorized to proceed; or
- (6) having travelled on the railway without being in possession of a ticket or free pass for the purpose, leaves or attempts to leave the railway without paying or tendering the proper fare for such travel,

he shall, in respect of each offence, be liable to a penalty not exceeding two hundred dollars, in addition to the amount due as railway fare or difference in railway fare.

47. In the preceding sections the term "free pass" includes any token or privilege pass or requisition form for the same respectively.

Definition of free pass.

48. If any person does or causes or procures to be done any of the following things:—

Offences on railways punishable by fine.  
Amended by No. 78 of 1948, s. 6;  
No. 55 of 1960, s. 12;  
No. 113 of 1965, s. 8.  
No. 77 of 1980, s. 11.

- (1) affixes any placard or bill on any part of the buildings or fences upon or connected with any railway, or sells or attempts to sell any articles on any railway, without being thereto authorized by the Commission;
- (2) neglects to shut any gate or slip-panel in any fence forming the boundary of or upon or adjoining any railway;
- (3) trespasses upon any part of a railway not being a station, platform, or railway crossing, or other part to which the public are allowed access by law,

he shall, in respect of each offence, be liable to a penalty not exceeding two hundred dollars.

Persons committing certain offences may be arrested. Amended by No. 78 of 1948, s. 18.

49. If any person—

- (1) trespasses upon a railway; or
- (2) is drunk, or behaves in a violent or offensive manner to the annoyance of others on the railway, or at any station or platform thereof, or in any carriage thereon; or
- (3) does or attempts to do, or counsels, aids, or assists another person to do, anything which may endanger the lives of persons employed on or travelling on the railway; or
- (4) offends against any of the provisions of this Act or any by-law, and refuses to give his name and address when required so to do, or gives a false name or address,

it shall be lawful for any police officer or constable, or any officer or servant of the Department or Commission, without warrant or other authority, to arrest and detain the person so offending, and to take him before justices of the peace to be dealt with as the law directs.

Summary interference on breach of by-law. Amended by No. 78 of 1948, s. 18.

50. When the breach of any provision of this Act or of any by-law is attended with any danger or annoyance to the public or any person, any officer or servant of the department or Commission may summarily interfere to obviate or remove such danger or annoyance, or the person causing the same, without prejudice to any proceeding against the offender for any penalty to which he may be liable.

Penalty for offences by railway servants. Amended by No. 55 of 1960, s. 13.

51. (1) If any person employed upon a railway—

- (a) is found drunk, or under the influence of intoxicating liquor or of any drug, while on duty; or
- (b) is guilty of any breach or neglect of duty which has caused or might have caused personal injury to any person, or whereby

the passage of any locomotive, carriage, wagon, or train has been or might have been obstructed, or impeded,

any other person employed upon the railway, and all such persons as he may call to his assistance, may seize and detain such person so offending, or any person counselling, aiding, or assisting in such offence, and convey him before any two or more justices of the peace, without any other warrant or authority than this Act, to be dealt with according to law.

(2) Every person so offending and every person counselling, aiding, or assisting therein shall, upon summary conviction be liable to imprisonment, with or without hard labour, for any period not exceeding six months, or to a penalty not exceeding two hundred dollars.

52. (1) Every person employed on or about a railway shall be responsible for any damage caused by his wrong-doing or neglect; and the loss occasioned thereby may be deducted from any salary, wages, or emolument due to such person, or may be recovered in a summary way.

Railway servants responsible for damage. Amended by No. 56 of 1926, s. 2; No. 72 of 1972, s. 3.

(2) Before any loss is deducted, or commenced to be deducted, pursuant to subsection (1) of this section from any salary, wages or emolument due to a person who is a permanent employee within the meaning of section seventy-seven of this Act, that person shall be given notice in writing containing particulars of the damage which is alleged to have been caused by his wrongdoing or neglect and of the loss which is to be so deducted.

(3) A person who receives a notice pursuant to subsection (2) of this section may appeal to the Appeal Board against the deduction of the loss referred to in that notice and any such appeal may be made in the same manner as if it were an appeal made under the provisions of section seventy-seven of this Act, and for the purposes of section eighty

of this Act the date on which the person received that notice shall be deemed to be the date of the decision appealed against.

Railway  
servant may  
impound.  
Amended by  
No. 78 of 1948,  
s. 6.

53. Any person employed on or about any railway may impound cattle trespassing on such railway; and any act, matter, or thing required under the Cattle Trespass, Fencing and Impounding Act 1882-1932,<sup>1</sup> to be performed or done by the owner or occupier of land as defined in such Act may be performed and done in respect of a railway by any person authorized generally or particularly for that purpose by the Commission.

Heading.  
Substituted  
by No. 93 of  
1978, s.3.

#### PART IV.—FINANCE AND ACCOUNTS.

Funds of  
the  
Commission.  
Inserted by  
No. 93 of  
1978, s. 4.

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.

Accounts,  
Inserted by  
No. 76 of 1948,  
s. 19, as  
s. 53A, and  
incorporated  
and  
renumbered  
as s. 54 in  
1949 reprint.  
Cf. s. 91 post  
and  
No. 60 of 1945,  
s. 51.

54. The Commission shall provide, keep and maintain such accounts in such manner and form as the Auditor General shall from time to time require, and shall enter therein, true and regular accounts—

- (a) of all moneys received and paid and of all moneys owing to and by the Commission, and of the several purposes for which such moneys are received and paid and owing; and
- (b) of all assets and liabilities, profits and losses.

Loans  
Account.  
Inserted by  
No. 93 of  
1978, s. 5.

54A. There shall be an account, to be known as the Western Australian Government Railways Commission Loans Account, maintained in the

<sup>1</sup> Now see Part XX of Local Government Act 1960.

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.

54AA. The Commission may provide credit to customers or suppliers in the normal course of business (whether or not such credit is to be secured) and including the provision of credit for the construction of sidings under section sixty-eight of this Act, in a manner which is appropriate to a trading corporation in the normal course of business practice or in any other manner which is specifically approved by the Treasurer, and give, arrange, or take security therefor.

Commission may provide credit to customers or suppliers. Inserted by No. 12 of 1982, s. 3.

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. Inserted by No. 93 of 1978, s. 5.

(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,

*Government Railways.*

- and is hereby authorized 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 the 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.

Evidence of compliance with requirements of the Act, and the use of finance. Inserted by No. 93 of 1978, s. 5.

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 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 authorizations 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 authorized 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.  
Inserted by  
No. 93 of  
1978, s. 5.

(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.

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 func-

Borrowing  
power, from  
Treasury  
sources.  
Inserted by  
No. 93 of  
1978, s. 5.

tions, the Treasurer, who is hereby authorized 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.  
Inserted by  
No. 93 of 1978,  
s. 5.

**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 authorized 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";

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- (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 authorized 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 authorized 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 mis-application thereof.

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

- (a) be securities authorized by the laws relating to the investment of trust moneys; and

Trustee investments in debentures, etc.  
Inserted by No. 93 of 1978, s. 5.

- (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 authorized or directed to invest, in addition to any other investments expressly authorized 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.

Guarantees,  
generally.  
Inserted by  
No. 93 of 1978,  
s. 5.

**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 authorized, 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.

Charge on  
Loans  
Account  
and assets.  
Inserted by  
No. 93 of 1978,  
s. 5.

**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.

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. Inserted by No. 93 of 1978, s. 5.

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.

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.

Power to make provision to pay off loans. Inserted by No. 93 of 1978, s. 5.

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.

Temporary investment of moneys. Inserted by No. 93 of 1978, s. 5.

Depreciation.  
Inserted by  
No. 78 of 1948,  
s. 19, as  
s. 53B, and  
incorporated  
and  
renumbered  
as s. 55 in  
1949 reprint.  
Cf. No. 60 of  
1945, s. 52.

55. The Commission shall determine the amount of the depreciation and obsolescence of the assets in relation to the exercise by the Commission of its powers and the discharge of its duties under this Act:

Provided that when and as often as the Auditor General is of the opinion that any such amount should be increased, the amount determined by the Auditor General shall, subject to the approval of the Governor, prevail.

Books may  
be inspected.  
Inserted by  
No. 78 of 1948,  
s. 19, as  
s. 53C, and  
incorporated  
and  
renumbered  
as s. 56 in  
1949 reprint.  
Cf. No. 60 of  
1945, s. 55.

56. The books of accounts which have hitherto been kept by the body corporate under the name of the Commissioner or shall hereafter be kept by the Commission shall be open to the inspection of the Auditor General and any person authorized by him to inspect the same, and copies or extracts may be taken therefrom.

Accounts to  
be balanced.  
Inserted by  
No. 78 of 1948,  
s. 19, as  
s. 53D, and  
incorporated  
and  
renumbered  
as s. 57 in  
1949 reprint.  
Cf. No. 60 of  
1945, s. 56.

57. The Commission shall balance or cause to be balanced all its accounts on the thirtieth day of June in each year.

Accounts to  
be audited.  
Inserted by  
No. 78 of 1948,  
s. 19, as  
s. 53E, and  
incorporated  
and  
renumbered  
as s. 58 in  
1949 reprint.  
Cf. No. 60 of  
1945, s. 57.

58. (1) The Commission shall once in every year cause a full and true balance sheet of its assets and liabilities, together with a profit and loss account, and such other statements (including statistical records) as may be necessary or required by the Auditor General to be compiled from the books of accounts, to be prepared and to be submitted to the Auditor General for audit.

(2) The balance sheet and statements shall be so prepared as to show fully and faithfully the financial position of the Government Railways and all undertakings under the Commission's control, and the financial results of the Commission's operations for the year.

(3) The Auditor General shall certify that he has found the accounts in order or otherwise, as the case may be, and whether in his opinion the accounts are properly drawn up so as to present a true and correct view of the transactions for the period under review as shown by the books, and all items of receipts and payments and all known liabilities and assets have been fairly brought into account and the value of all assets fairly stated.

(4) The Auditor General shall in respect of such accounts have all the powers conferred upon him by the Audit Act 1904-1947,<sup>1</sup> and shall arrange for a periodical or continuous audit of such accounts.

(5) The Commission may, subject to this Act, retain or appoint an internal auditing staff whose duty it shall be to conduct a continuous audit of the accounts:

Provided that the nature and extent of the audit work to be performed shall be subject to the approval of the Auditor General.

59. The Commission shall, once in every three months, cause to be prepared a quarterly Railways Working Account, showing the total gross receipts accruing from the railways during the period covered by the account, and the total expenditure upon the working, management, and maintenance during the same period.

Quarterly  
Railways  
Working  
Account.  
No. 23 of 1904,  
s. 54.  
Amended by  
No. 78 of 1948,  
s. 6.  
Renumbered  
s. 59 in 1949  
reprint.

Such account shall show the gross cost of construction of the railway, including the cost of locomotives and rolling-stock and all incidental expenditure: Provided that, for the purpose of such accounts, the cost as ascertained at the end of each financial year shall be inserted as the cost during the twelve months next ensuing.

All such accounts shall be published in the *Government Gazette*, and shall be laid before Parliament.

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<sup>1</sup> Now Audit Act 1904-1978.

Receipts from railways to be paid to Consolidated Revenue Fund.  
No. 23 of 1904, s. 55.  
Amended by No. 78 of 1948, s. 20.  
Renumbered s. 60 in 1949 reprint.

60. All moneys received by way of rents, tolls, fares, freights, carriage, fines, or penalties, or otherwise accruing from a railway, shall be paid into the Public Account, and, except as by this Act otherwise provided, form part of the Consolidated Revenue Fund.

Disposal of surplus stock.  
No. 23 of 1904, s. 56.  
Amended by No. 78 of 1948, ss. 6 and 21.  
Renumbered s. 61 in 1949 reprint.

61. All locomotives, rolling-stock, machinery, material, plant, and other effects which have been charged to a vote of Parliament appropriated to the department, and which are no longer required for the purpose for which the same were originally obtained, may be taken over, valued, and placed in the Railway Suspense Stock by the Comptroller of Stores, and the amount of such valuation shall be credited in the books of the Treasury to the Railway Stores Adjustment Account, and at the end of each financial year the amount so credited shall be transferred to the credit of expenditure under the Consolidated Revenue Fund or, with the concurrence of the Commission, to the credit of the appropriate account entitled to the credit.

#### PART V.—LEASING RAILWAY PROPERTY.

Commission may lease railways.  
No. 23 of 1904, s. 57.  
Amended by No. 78 of 1948, s. 6.  
Renumbered s. 62 in 1949 reprint.

62. The Commission may, with the approval of the Governor, from time to time let on lease any portion of a railway, with the rolling-stock and other appurtenances thereto belonging, to any person willing to take and work the same, subject to the following conditions:—

- (1) The letting shall be by public tender.
- (2) The terms and conditions of the lease shall be laid before Parliament not less than thirty days before tenders are called for.
- (3) The lease shall contain covenants for maintaining the railway, and everything demised or leased therewith, in good and

sufficient repair, and so leaving and delivering up at the expiry or prior determination of the lease.

- (4) The lessee shall use the railway subject to the provisions of this Act and to the by-laws made thereunder for the management of railways.
- (5) The lessee shall find good and sufficient security for the due performance of the conditions of the lease, to such amount as the Commission directs.

63. (1) The Commission may, with the approval of the Minister, from time to time let on lease, for any purpose approved by him, any land belonging to any railway but not required for railway purposes, and any buildings, workshops, or other erections thereon.

Unused land or buildings may be leased.  
No. 23 of 1904, s. 58.  
Amended by No. 15 of 1939, s. 2;  
No. 78 of 1948, s. 6.  
Renumbered s. 63 in 1949 reprint.  
Amended by No. 61 of 1955, s. 3.

(2) Every such lease shall be granted for a period not exceeding twenty-one years unless a longer period is authorized under subsection (3) of this section, and on such terms and conditions as the Commission thinks fit.

(3) Where the Minister is of opinion that because of the special circumstances of the case, the granting of a lease for a period exceeding twenty-one years is justified, the Minister may, by written authorization signed by him, and containing such conditions, if any, as he thinks fit, authorize the Commission to grant the lease for such period exceeding twenty-one years but not exceeding fifty years as the Minister specifies in the authorization.

64. (1) The Commission may from time to time, after calling tenders, lease for any period not exceeding three years, and on such terms and conditions as it thinks fit, any part of the land or buildings of a railway for the sale, subject to the provisions of the Liquor Act 1970, of liquor pursuant to a railway refreshment room licence granted under

Lease for specified purposes.  
No. 23 of 1904, s. 60.  
Renumbered s. 64 in 1949 reprint.  
Substituted by No. 61 of 1970, s. 4.

that Act, the sale of other refreshments, books, or other articles or the use of the walls of any such building, or any part of the rolling stock, for the display of advertisements thereon.

Sale and supply of liquor.

(2) The Commissioner, as the Commission, may sell or supply liquor, or authorize the sale or supply of liquor, in railway refreshment rooms, or on trains, that are under the management or control of the Commission.

Powers of Commission as to use of railways, wharves, etc. No. 23 of 1904, s. 60.  
Amended by No. 78 of 1948, s. 6.  
Renumbered s. 65 in 1949 reprint.

65. The Commission may, with the approval of the Minister, from time to time enter into any agreement or contract with any person for all or any of the following things:—

- (a) Providing that such person may, for a period not exceeding twelve months, use any works, buildings, wharves, and jetties constructed and used in connection with a railway.
- (b) Providing that the Commission, or any person authorized by it, may use any works, buildings, wharves, and jetties belonging to any such person, and constructed and used in connection with any railway.

Additional powers to Commission as to use of railways, wharves, etc. No. 23 of 1904, s. 61.  
Amended by No. 78 of 1948, s. 6.  
Renumbered s. 66 in 1949 reprint.

66. The Commission may, with the approval of the Minister, from time to time agree with any person for all or any of the following things:—

- (1) For laying down any tramway or line of rails in or upon any wharf, quay, or dock, or upon any land vested in any such person, for the conveyance of goods and passengers to and from a railway:
- (2) For the use of cranes, hoists, weighing and other machines, weights and measures, conveniences, or appliances belonging to any such person:



- (3) For conveying wholly or partly, as may be agreed upon, or booking through to their destination on a railway, the passengers or luggage carried or conveyed by the steamers, coaches, or other conveyances of any such person:
- (4) For the charges to be payable for services performed by or on behalf of any person in connection with a railway:
- (5) For the collection of the charges, and for the payment of the same, or any part thereof, collected as aforesaid, to or on behalf of any person with whom any agreement as aforesaid is made:
- (6) As to the payment to be made by the one party to the other party of such charges as may be fixed in that behalf, and as to the time and mode of payment thereof, and the keeping of accounts between the parties:
- (7) Generally, for the settlement of such terms and conditions as may be necessary to give effect to the foregoing provisions.

67. (1) The Commission may, with the approval of the Minister, from time to time grant to any person any easement in, upon, through, over, or under any railway land, subject to such conditions and payments of rent as the Commission shall think fit, and subject to revocation without compensation at any time when the service of the public requires it, and subject also to immediate revocation in case of the breach of any conditions under which such easement was granted.

Grant of easements. No. 23 of 1904, s. 62. Amended by No. 78 of 1948, s. 6. Renumbered s. 67 in 1949 reprint.

(2) Subject to such terms as to rental or other payment, and such other terms and conditions as are deemed fit, and subject also, in every case, to the conditions as to revocation contained in sub-

section (1) hereof, the Commission may from time to time grant to any person any of the following easements, privileges, or concessions in respect of any railway land, that is to say—

- (a) right of way or passage;
- (b) right of access to any railway by gateway or otherwise;
- (c) right to use water;
- (d) right to lay, construct, maintain, and use any tramway, roadway, footway, level crossing, subway, bridge, electric or other wire, water-race, sludge-channel, culvert, drain, pipe, loading-bank, weighbridge, wharf, stage, timber-slip, booms, crane, protective bank, sluice-gate, fence, or plantation;
- (e) right to cross any railway with cables for electric lighting or power;
- (f) right to take away timber, earth, clay, rock, ballast, gravel, or sand;
- (g) any other easement, privilege, or concession of a similar character.

#### PART VI.—SIDINGS.

Commission may agree to work siding in connection with railway.  
No. 23 of 1904, s. 63.  
Amended by No. 78 of 1948, s. 6.  
Renumbered s. 63 in 1949 reprint.  
Amended by No. 12 of 1982, s. 4.

68. The Commission may agree with any person desiring to construct a siding in connection with any Government railway for the construction and maintenance of such siding, and for the working of such siding in connection with the railway, subject, however, to the following conditions:—

- (1) No such agreement shall have effect for more than seven years from the date thereof.
- (2) The part of such siding within the limits of the railway shall be deemed to be a part of the railway, and shall be worked subject

to any regulations for the time being in force in respect to the railway or such part thereof.

- (3) The part of such siding without the limits of the railway shall be worked subject to such regulations as the Commission from time to time thinks fit to impose, whether by by-law or otherwise, providing for proper maintenance with a view to protecting the railway and rolling-stock from injury, and to insuring safety and economy in working.
- (4) If default is made in duly paying any moneys payable under such agreement, or in duly observing any of the other terms or conditions thereof, the Commission may at any time suspend the traffic upon such siding, or close its connection with the railway.
- (5) The Commission may at any time, after giving three months' notice thereof to the owner or manager of such siding, close or remove the connection with the railway.
- (6) No compensation shall be payable to any person whatever for any loss or damage arising from the connection of any siding with the railway being closed or removed under either of the two last preceding subsections hereof.

69. (1) After the completion of any such siding connected with a Government railway, the Commission may agree with the person constructing or owning the siding that any trains or rolling-stock the property of Her Majesty may be run upon the siding, and that any trains or rolling-stock the property of such person may be run upon any Government railway, upon such terms and conditions as are specified in the agreement.

Commission may make agreements for running-powers.  
No. 23 of 1904, s. 64.  
Amended by No. 78 of 1948, s. 6.  
Renumbered s. 69 in 1949 reprint.

(2) No such agreement shall have effect for more than three years from the date thereof.

(3) Such agreement may provide for the payments to be made by the one party to the other party of such rates of charges as are fixed in that behalf, and as to the time and mode of payment of such charges, and the keeping of accounts between the parties.

(4) For all purposes of conducting traffic, and for levying charges, and for the operation of by-laws and regulations, such siding shall, during the subsistence of such agreement, be deemed to be a Government railway, and all the provisions of this Act which may be applicable thereto shall be applicable to such siding accordingly, subject to such modifications or alterations as are prescribed by the Commission.

(5) Nothing in this Act or in any such agreement shall be deemed to authorize any person to enter upon any Government railway for any purpose whatsoever, except with the written authority of the Commission first obtained in that behalf.

#### PART VII.—MISCELLANEOUS PROVISIONS.

Power to close bridges, etc.  
No. 23 of 1904, s. 65.  
Amended by No. 78 of 1948, s. 6.  
Renumbered s. 70 in 1949 reprint.

70. The public right-of-way on any bridge or subway over or under any railway, or on any road crossing a railway on the level, shall be subject to the by-laws made under this Act, and the Commission may from time to time close any such bridge, subway, or level crossing to public traffic during repairs, or in the interest of public safety.

Obstruction to traffic.  
No. 23 of 1904, s. 66.  
Amended by No. 78 of 1948, s. 6.  
Renumbered s. 71 in 1949 reprint.

71. If the Commission is of opinion that any tree on land adjacent to a railway is likely, by falling or otherwise, to obstruct, interfere with the traffic, or endanger the travellers thereon, it may cause the same to be removed.

72. Notwithstanding anything contained in any Act relating to railways or tramways, no railway or tramway shall cross any Government railway on the level, except under an agreement previously entered into in that behalf between the Commission and the owner of such railway or tramway; and the Commission is hereby empowered to enter into such agreements upon such terms and conditions as it thinks fit, and to enforce the same whenever the occasion arises.

No railways to cross Government railways without consent.  
No. 23 of 1904, s. 67.  
Amended by No. 78 of 1948, s. 6.  
Renumbered s. 72 in 1949 reprint.

Every such agreement shall provide that, in case default is made by the owner of such railway or tramway in carrying out the terms of any such agreement as aforesaid, the Commission may, in addition to the exercise of any other remedies prescribed by the agreement, remove the crossing, and all material used in connection therewith, from such Government railway.

73. (1) The Commission may appoint, suspend, dismiss, fine, transfer without payment of transfer expenses, or reduce to a lower class or grade, any officer or servant of the Department, and may, without prejudicing or otherwise affecting any other authority the Commission has to act by agents, delegate any of the powers conferred upon the Commission by this section, in such manner, for such period, and subject to such conditions, if any, as the Commission deems fit, and the delegate may exercise the powers in accordance with the delegation, but neither the Commission nor the delegate shall in the exercise of any of those powers, be subject to the Minister except in the cases of such offices and services as shall be prescribed:

Commission may appoint and dismiss certain officers.  
No. 23 of 1904, s. 68.  
Amended by No. 78 of 1948, s. 23.  
Renumbered s. 73 in 1949 reprint.  
Amended by No. 61 of 1955, s. 4;  
No. 55 of 1960, s. 14.  
See s. 8 (2) and s. 23 (26) ante.

But every such officer and servant shall be deemed to be in the service of the Crown.

(2) The Commission may—

(a) in any case where an officer or servant has for any act or omission been suspended—

(i) fine;

- (ii) reduce to a lower class or grade;
- (iii) dismiss; or
- (iv) transfer without payment of transfer expenses,

that officer or servant, notwithstanding and in addition to such suspension; and

- (b) in any case where the Commission considers the circumstances warrant, by way of punishment for an act or omission reduce an officer or servant to a lower class or grade and also transfer him without payment of transfer expenses,

but except as provided in this subsection the Commission shall not inflict on any officer or servant more than one form of punishment for the same offence:

Provided nevertheless that if the act or omission is one in respect of which the officer or servant has been punished under section thirty-one or section thirty-two of the Traffic Act 1919,<sup>1</sup> the Commission may inflict on that officer or servant the punishment referred to in subparagraph (iii), or either or both of the punishments referred to in subparagraphs (ii) and (iv), but not the punishment referred to in subparagraph (i), of paragraph (a) of this subsection.

Railway  
police.  
No. 29 of 1907,  
s. 15.  
Amended by  
No. 78 of 1948,  
s. 6.  
Incorporated  
as s. 74 in  
1949 reprint.  
Amended by  
No. 55 of 1960,  
s. 15.

74. (1) The Commission may, from time to time, with the approval of the Governor, appoint and dismiss special constables who shall not be members of the Police Force but who, within the limits of the Government railways, shall have, exercise, and enjoy all such powers, authorities, and immunities, and be liable to such duties and responsibilities as any duly appointed member of the Police Force now has by law.

(2) No matter or thing done or omitted by the Commission or any special constable in good faith in the course of the exercise or purported exercise of any power or authority or in the performance or purported performance of any duty conferred

<sup>1</sup> Repealed by Road Traffic Act 1974.

or imposed under the provisions of this section or any by-law made pursuant to paragraph (26a) of section twenty-three of this Act shall render the Crown or the Commission or special constable, as the case may be, subject to any liability in respect thereof.

75. A statement in writing at the foot of or indorsed upon a wages or salary pay sheet to the effect that the officers or employees therein named have been paid the amount of salary or wages set against their names shall, if purporting to be signed by a paying officer and countersigned by some other officer or employee of the department, be *prima facie* evidence of the payment set forth in such salary or wages pay sheet.

Payment of salaries or wages may be proved by certified sheet.  
Enacted by No. 29 of 1907, s. 14.  
Incorporated as s. 75 in 1949 reprint.

76. (1) Notwithstanding anything in this Act or in any industrial award or industrial agreement to the contrary, every officer or servant of the department appointed or whose employment commences after the commencement of this section, shall be deemed to be appointed or employed as such officer or servant upon the express condition that he will become and continue a member of or contributor to the Western Australian Government Railways Employees' Endowment Fund Incorporated established under paragraph (27) of section twenty-three of this Act, under and in accordance with the by-laws now and from time to time made by the Commission under this Act in relation to the said Fund.

Certain employees to contribute to Western Australian Government Railways Employees' Endowment Fund Incorporated.  
Inserted by No. 36 of 1933, s. 8, as s. 68A.  
Amended by No. 78 of 1948, ss. 6 and 24.  
Incorporated and renumbered as s. 76 in 1949 reprint.  
Amended by No. 55 of 1960, s. 16;  
No. 27 of 1963, s. 3;  
No. 47 of 1977, s. 4.

(2) Every officer and servant referred to in subsection (1) of this section shall become liable for payment of his membership contributions to the said Fund as from and commencing on a day one month after the date of his appointment or the commencement of his employment, as the case may be, and thereafter shall continue liable for payment of such membership contributions under and in accordance with the by-laws aforesaid relating to the Fund; and the amount of such membership

contributions as and when they become due and payable shall be a debt owing by such officer or servant to the committee of management of the said Fund, and shall be recoverable at the suit of such committee in any court of competent jurisdiction.

(3) In the case of every officer or servant to whom this section applies, it shall be lawful for the Commission, or its paying officer, or any other officer of the Department charged with the duty of paying salary or wages to such officer or servant, to deduct from such salary or wages, whenever payment of the same is being made, the amount of the membership contributions payable by such officer or servant to the said Fund, and to pay the amount so deducted to the committee of management of the said Fund, without being required to give any notice of intention so to do to, or obtain any order or authority so to do from, such officer or servant.

(4) Provided that subsections (1), (2), and (3) of this section shall not in any way affect or apply to—

- (a) any officer or servant employed in the Department at the commencement of this section, unless he shall subsequently cease to be so employed, and thereafter shall again be appointed as an officer or servant in the Department, in which case he shall, for the purposes of this section, be deemed to be an officer or servant appointed or employed to or in the Department after the commencement of this section; and
- (b) any officer or servant appointed, or whose employment commences after the commencement of this section, who proves to the satisfaction of the Commission that he holds for his own benefit and is maintaining a life insurance policy in an insurance company in Western Australia approved by the Commission for an amount which, together with bonuses or other benefits accrued or to accrue hereafter will, upon the maturity of the policy during the life



of the assured, entitle the assured or his legal representative to payment of an amount equal to the amount which the officer or servant would be entitled to receive from the said Fund as a member thereof, upon his right to such payment as a member accruing under the by-laws relating to the said Fund:

Provided, that the exemption provided by this paragraph shall cease to operate as from the date when any officer or servant aforesaid ceases to maintain such life policy aforesaid, and subsections (1), (2), and (3) of this section shall apply to such officer or servant as from the said date as if he had been appointed to or had commenced his employment in the Department on such date:

Provided further that the provisions of this paragraph shall not apply to any officer or servant appointed, or whose employment commences, on or after the date of the coming into operation of the Government Railways Act Amendment Act 1960.

- (c) any officer or servant whose employment commences after the coming into operation of the Government Railways Act Amendment Act 1948, and who proves to the satisfaction of the Commission that he has elected to become a contributor to the Superannuation Fund established under the Superannuation and Family Benefits Act 1938-1947<sup>1</sup>;

Formerly (ba) inserted by No. 78 of 1948, s. 24, and re-designated (c) in 1949 reprint.

- (d) any officer or servant employed in the Department whose rate of pay is lower than the minimum rate prescribed for the lowest paid male adult worker (other than an apprentice) engaged on full time in the department, or whose employment is of a temporary nature.

Formerly (c) and re-designated (d) in 1949 reprint.

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<sup>1</sup> Now Superannuation and Family Benefits Act 1938-1982.

(5) Provided also that nothing in this section or in subsection (4) hereof shall prevent an officer or servant employed in the Department at the commencement of this section, or any officer or servant exempted by paragraph (b) or (d) of subsection (4) hereof, from contributing voluntarily to the Western Australian Government Railways Employees' Endowment Fund Incorporated as a member thereof whilst he continues to be so employed.

(6) The Commission may by by-laws made under the authority of this Act and relating to the Western Australian Government Railways Employees' Endowment Fund Incorporated prescribe special conditions for the benefit of officers or servants in the department to whom subsections (1), (2) and (3) of this section apply, and who prove to the satisfaction of the Commission that they hold and are maintaining a life policy in an insurance company approved by the Commission, the amount of which is not sufficient to entitle such officers or servants to the exemption provided in paragraph (b) of subsection (4) of this section.

Appeal.  
No. 23 of 1904,  
s. 69.  
Amended by  
No. 78 of 1948,  
ss. 6 and 25.  
Renumbered  
s. 77 in 1949  
reprint.  
Amended by  
No. 61 of 1955,  
s. 5;  
No. 38 of 1958,  
s. 3.  
See s. 5 (3)  
ante.

77. Any person who, being permanently employed on a Government Railway, is, under section seventy-three of this Act,—

- (1) fined; or
- (2) reduced to a lower class or grade; or
- (3) dismissed; or
- (4) suspended from employment in such circumstances as to involve loss of pay; or
- (5) transferred by way of punishment involving loss of transfer expenses,

may, in the prescribed manner, appeal to an Appeal Board constituted as hereinafter provided, except where the person is the occupant of an office prescribed under section seventy-three of this Act

as one in respect of which the exercise of any of the powers referred to in that section is subject to the Minister, in which case the person shall not have a right of appeal to an Appeal Board so constituted, but the person may in manner prescribed by the regulations appeal to a Stipendiary Magistrate.

No person shall be deemed "permanently employed" within the meaning of this section unless he has been continuously employed for three months.

See s. 52  
ante.

78. (1) An Appeal Board shall consist of the following persons, that is to say:—

Constitution  
of appeal  
Board.  
No. 23 of 1904,  
s. 70.  
Substituted  
by No. 29 of  
1907, s. 8.  
Amended by  
No. 56 of 1926,  
s. 3;  
No. 78 of 1948,  
ss. 6 and 26.  
Renumbered  
s. 78 in 1949  
reprint.  
Amended by  
No. 13 of 1954,  
s. 2;  
No. 8 of 1959,  
s. 2;  
No. 27 of 1976,  
s. 3.  
See s. 5 (3)  
ante.

(a) A stipendiary magistrate to be appointed from time to time by the Governor, and to be the chairman of the Appeal Board, or a person appointed in like manner to act as his deputy;

(b) One person to be appointed from time to time by the Commission, or a person appointed in like manner to act as his deputy; and

(c) One person to be appointed—

(i) by the industrial union; or

(ii) if there is no such union, or if that union has not made the appointment prior to the seventh day immediately preceding the date fixed for the hearing of the appeal, by the appellant personally by notice in writing given to the chairman of the Appeal Board,

or a person appointed in like manner to be his deputy.

(2) The Commission shall take the necessary action in regard to a person appointed to the Appeal Board pursuant to paragraph (c) of subsection (1) of this section as will ensure his attendance at each sitting of the Appeal Board.

(3) For the purposes of the provisions of this Act relating to appeals to the Appeal Board a reference

to "the industrial union" shall be construed as a reference to the industrial union of workers or a trade union registered under a law of the State or the Commonwealth relating to the conciliation and arbitration of industrial disputes or the registration of trade unions of which the appellant is or was at the relevant time a member.

Transitional provision.  
Substituted by No. 27 of 1976, s. 4.

79. The term of office of every person who is entitled to be a member of an Appeal Board pursuant to paragraph (c) of subsection (1) of section seventy-eight of this Act as in force immediately before the coming into operation of the Government Railways Act Amendment Act 1976 is terminated by force of this section but a person who is a member of an Appeal Board pursuant to that provision who is hearing an appeal at the time of the coming into operation of the Government Railways Act Amendment Act 1976 may continue in office for the purpose of completing and determining that appeal.

Notice of appeal.  
No. 23 of 1904, s. 72.  
Amended by No. 56 of 1926, s. 5;  
No. 27 of 1976, s. 5;  
No. 77 of 1980, s. 12.  
Renumbered s. 80 in 1949 reprint.  
See s. 5 (3) ante.

80. Notice of every appeal to the Appeal Board shall be lodged with the Commission within fourteen days of the date of the decision appealed against, and the appeal shall be heard by the Appeal Board within thirty days from the date of lodging of the notice or within such extended period as is agreed in writing by the Commission and the industrial union or, if there is no such union, the appellant personally.

Where the industrial union fails to make an appointment by the time prescribed by subparagraph (ii) of paragraph (c) of subsection (1) of section seventy-eight of this Act and the appellant fails to make an appointment pursuant to that subparagraph prior to the day immediately preceding the date fixed for the hearing of the appeal, the appeal shall be deemed to have lapsed and the decision appealed against shall have full force and effect.

Where, for reasons not related to the appointment of a member by the industrial union or the appellant, the hearing of the appeal is not commenced within

thirty days from the lodging of the notice of appeal or within such extended period as is agreed, the punishment appealed against shall be revoked, and the appellant shall be reimbursed any loss of salary or expenses incurred: Provided that if the hearing of the appeal is commenced within such thirty days or within such extended period as is agreed the Appeal Board may allow any adjournment.

81. The decision of any two members of the Appeal Board shall be the decision of the Appeal Board.

Decision of Board.  
No. 23 of 1904, s. 73.  
Amended by No. 29 of 1907, ss. 10 and 8 (2).  
Renumbered s. 81 in 1949 reprint.  
See s. 5 (3) ante.

82. With respect to the procedure on appeals, the following provisions shall apply:—

Procedure on appeals.  
No. 23 of 1904, s. 74.  
Amended by No. 29 of 1907, s. 12;  
No. 56 of 1926, s. 6.  
No. 78 of 1948, s. 28.  
Renumbered s. 82 in 1949 reprint.  
Amended by No. 113 of 1965, s. 8;  
No. 27 of 1976, s. 6;  
No. 38 of 1979, s. 4.  
See s. 5 (3) ante.

- (1) The Appeal Board may admit evidence taken at any departmental inquiry at which the appellant was present and had an opportunity of hearing the evidence and of giving evidence.
- (2) Evidence of witnesses resident more than thirty-two kilometres from the place of the sitting of the Appeal Board may be taken by affidavit or otherwise as prescribed.
- (3) Any member of the Appeal Board may administer an oath to any witness, and the appellant shall be entitled to have the witnesses examined on oath.
- (4) The parties may be represented at the hearing of the appeal—

(a) as to the appellant—

(i) personally;

*Government Railways.*

(ii) by the secretary, or his deputy,  
of the industrial union;

or

(iii) by an employee of the Commission nominated by the appellant; and

(b) as to the Commission, by one of its employees authorized by it in that behalf:

Provided that no party shall be entitled to representation by a legal practitioner.

- (5) The Appeal Board may, subject to the regulations, regulate its own procedure and issue summonses for the attendance of witnesses, and shall have power to compel any witness to attend and give evidence.
- (6) Any person who does not appear pursuant to any such summons (the same having been personally served upon him, or sent by registered post as a letter addressed to him at his place of abode, and his reasonable travelling expenses, according to the prescribed scale, having been paid or tendered to him), and does not assign some reasonable excuse for not so appearing, or who appears and refuses to be sworn or examined, or to produce for the inspection of the Appeal Board any document which by such summons he is required to produce, shall be liable on summary conviction to a penalty not exceeding twenty dollars.
- (7) In addition to travelling expenses, a person attending as a witness shall be entitled to recover from the person at whose instance, or by whom, he was summoned or requested to attend, an amount to be fixed by the Appeal Board according to the prescribed scale of allowances to witnesses attending before the Appeal Board.

83. The Appeal Board may confirm, modify, or reverse any decision appealed against, or make such other order thereon as they think fit, and the decision of the Appeal Board shall be final.

Powers of Appeal Board.  
No. 23 of 1904, s. 75.  
Amended by No. 78 of 1948, s. 6.  
Renumbered s. 83 in 1949 reprint.  
See s. 5 (3) ante.

The Appeal Board may fix the costs of any appeal, and direct by whom and in what proportions they shall be payable, and in every case costs shall be awarded against an appellant whose appeal is considered frivolous.

All costs awarded against an appellant shall be recoverable as a debt due to the Crown.

All costs awarded to an appellant shall be payable by the Commission.

84. The Governor may make regulations—

- (1) Relating to the appointment and attendance of persons appointed to the Appeal Board pursuant to paragraph (c) of subsection (1) of section seventy-eight of this Act.
- (2) Regulating the procedure of Appeal Boards and the conduct of appeals, and the method of taking evidence at a distance.
- (3) Prescribing the allowances to witnesses for their expenses.
- (4) Prescribing the manner in which appeals may be brought under section seventy-seven of this Act to a stipendiary magistrate; prescribing the procedure and conduct of such appeals, including the taking of evidence at a distance and the power and authority of stipendiary magistrates hearing such appeals; prescribing the allowances to witnesses for their expenses; and incorporating in regulations made under this paragraph such of the

Regulations.  
No. 23 of 1904, s. 76.  
Amended by No. 78 of 1948, s. 6.  
Renumbered s. 84 in 1949 reprint.  
Amended by No. 38 of 1958, s. 4;  
No. 27 of 1976, s. 7.  
See s. 5 (3) ante.

provisions of sections eighty, eighty-two, and eighty-three of this Act, with such adaptations, as are considered necessary or desirable.

Regulation of lights.  
Interpretation.

Enacted by No. 15 of 1939, s. 3, as s. 76A.  
Amended by No. 78 of 1948, s. 6.  
Incorporated and renumbered as s. 85 in 1949 reprint.  
Amended by No. 113 of 1965, s. 8.

85. (1) For the purposes of this section—

“Light” includes any fire, lamp, light, illuminated sign, street light, or other mechanical, manufactured, or constructed illumination and also the flow from any such light.

“Railway light” includes lights, signals, and signs used as an aid or guide to railway traffic.

“Owner” includes the owner, lessee, tenant, purchaser, hirer, or other person in possession or entitled to the possession of a light, and in the case of a street light, means the local government authority in whose district such street light is erected or installed.

Powers in relation to lights.

(2) Where any light is used, kept, burnt, or exhibited between the hours of sunset and sunrise at such a place (whether within or outside railway premises), or in such a manner as in the opinion of the Commission to be likely to be mistaken for or obscure or conflict with or adversely interfere with the effectiveness of any railway light, the Commission may by notice in writing require the owner of or the person in charge of such light or the occupier of the place or premises where such light is used, kept, burnt, or exhibited, within a time to be specified in the notice to take effectual means—

- (a) to extinguish the light; or
- (b) remove the light entirely or to some other position; or
- (c) to modify the light or to alter its character or colour, or to screen the light to such an extent and in such manner as the Commission may direct; or



- (d) to refrain from using, keeping, burning, or exhibiting the light, either entirely or for such period or during such hours as the Commission may direct;
- (e) to do or refrain from doing such other act, matter, or thing in relation to using, keeping, burning, or exhibiting the light as the Commission may direct and in accordance with the directions of the Commission.

(3) Any notice under subsection (2) of this section may be served either personally or by delivery at the place of abode of the person to be served or by affixing it in some conspicuous place on or near the place or premises upon or in which the light to which the notice relates is used, kept, burnt, or exhibited.

(4) It shall be the duty of the owner, occupier, or other person served with a notice under subsection (2) of this section to comply with such notice.

(5) Every owner, occupier, or other person on whom a notice is served under subsection (2) of this section who fails, without reasonable cause (proof whereof shall lie upon him) to comply in all respects with the directions contained in the notice shall be guilty of an offence against this Act.

Penalty—two hundred dollars, and in addition a daily penalty of ten dollars for every day or part of a day during which the directions contained in the notice are not complied with after the time specified in the notice for the compliance therewith.

(6) If any owner, occupier, or other person served with a notice under subsection (2) of this section fails in any respect to comply with the directions of such notice within the time specified in the notice for such compliance, the Commission or any person authorized in writing by the Commission may enter upon the place or premises whereon the light to which the notice relates is used, kept, burnt, or

Commission may cause requisitions of notice to be carried out.

exhibited, and forthwith take effectual means (but doing no unnecessary damage) to carry out and otherwise give effect to the directions contained in the notice which have not been complied with as aforesaid.

(7) Any expense incurred by the Commission or the person authorized by the Commission under subsection (6) of this section shall be a debt owing to the Commission by the person upon whom the notice was served as aforesaid and shall be recoverable at the suit of the Commission in any court of competent jurisdiction.

(8) If the owner, occupier, or other person upon whom a notice under subsection (2) of this section has been served as aforesaid, or any other person obstructs, or hinders, prevents, or interferes with, or attempts to obstruct, hinder, prevent, or interfere with the Commission or the person authorized by the Commission, in the exercise of the power conferred by subsection (6) of this section, he shall be guilty of an offence against this Act.

Penalty: One hundred dollars.

Civil rights.

(9) Where any owner, occupier, or other person upon whom a notice under subsection (2) of this section has been served as aforesaid has failed within the time prescribed by such notice to comply with the directions of such notice, and by reason of such non-compliance, and by reason of the light to which the said notice relates being mistaken for, or obscuring, or conflicting with, or adversely interfering with the effectiveness of a railway light, any damage results to any property of the Commission, or to any person, or to the property of any person, whether in the employ of the Commission or a member of the public, the said non-compliance with the said notice shall, for the purpose of enabling the Commission or such other person to recover compensation or damages in respect of the damage resulting, be deemed to be a tort in the nature of a nuisance committed by such owner, occupier, or person aforesaid upon which an action for damages may be instituted.

(10) The omission on the part of the Commission to give any notice under subsection (2) of this section, or the failure on the part of the Commission to exercise the power conferred by subsection (6) of this section shall not make the Commission in any respect responsible or liable for any damage resulting to any person or property as the result of any light being mistaken for or obscuring or conflicting with, or adversely interfering with the effectiveness of a railway light.

Saving provision.

(11) Proceedings for offences against this Act may be commenced on a complaint by the Commission or some person duly authorized in writing, and may be dealt with summarily under the provisions of the Justices Act 1902-1948.<sup>1</sup>

Proceedings for offences.

86. No officer or servant of the Department shall—

- (1) Engage in any employment outside the duties of his office except with the approval of the Commission; or
- (2) Except with the consent in writing of the Minister, in any wise participate or claim to be entitled to participate in any profit, commission, benefit, or emolument, arising directly or indirectly from any contract or agreement made by or on behalf of the Government, whether the profit, commission, benefit, or emolument, is that of, or derived by, a party to the contract or any other person; or
- (3) Acquire any Crown lands without the approval of the Minister.

No railway servant to engage in outside employment. No. 23 of 1904, s. 77. Substituted by No. 29 of 1907, s. 13. Amended by No. 78 of 1948, s. 6. Renumbered s. 86 in 1949 reprint. Amended by No. 17 of 1958, s. 5.

87. If any person, after his employment upon a railway has ceased, shall continue in occupation of any railway premises, he may be removed therefrom without legal process by any person acting with the authority of the Commission.

Persons unlawfully occupying railway premises may be removed. No. 23 of 1904, s. 78. Amended by No. 78 of 1948, s. 6. Renumbered s. 87 in 1949 reprint.

<sup>1</sup> Now Justices Act 1902-1982.

Railway property not subject to rates, etc.  
No. 23 of 1904, s. 79.

Amended by No. 78 of 1948, s. 6.  
Renumbered s. 88 in 1949 reprint.

88. No rate, tax, or assessment shall be made, charged, or levied upon any Government railway unless the contrary is expressly provided in any Act.

[89. Repealed by Act No. 32 of 1951, s. 3.]

[Ss. 81 and 82 of No. 23 of 1904 repealed by No. 78 of 1948, ss. 29 and 30.]

Quarterly reports to Minister.  
No. 23 of 1904, s. 83, amended by No. 78 of 1948, s. 6.  
Renumbered s. 90 in 1949 reprint.  
Amended by No. 94 of 1972, s. 4 (as amended by No. 19 of 1973.)

90. In the first month in each quarter of every year the Commission shall report, in writing, to the Minister upon—

- (a) The state of the traffic returns, with the approximate earnings of trains per train kilometre, carried during the past quarter;
- (b) The general conditions of all railways, and the accommodation for the traffic;
- (c) Such other matters as the Minister may direct.

Such reports shall be laid before Parliament if Parliament is sitting, and if not, then immediately upon the re-assembling of Parliament; but the Minister may, if he thinks fit, publish such reports forthwith on his receiving them.

Annual report.  
No. 23 of 1904, s. 84.  
Amended by No. 78 of 1948, ss. 6 and 31.  
Renumbered s. 91 in 1949 reprint.

91. (1) The Commission shall prepare an annual report upon the Government railways and the working thereof, and an account of all moneys received and expended during the preceding year.

(2) Such annual report, together with copies of the balance sheet and statements then last prepared and audited and the Auditor General's report thereon shall be laid before both Houses of Parliament in the month of September in each year, if Parliament is then sitting, and if Parliament is not then sitting, then within one month after the commencement of the next ensuing session thereof.

(3) The Commission shall also prepare estimates, in such form as the Minister may from time to time direct, of the receipts and expenditure for each period of twelve months ending on the thirtieth day of June in every year.

92. (1) For the purposes of this section, "Government department" includes a Minister of the Crown acting in his official capacity, any State Government Department, State Trading Concern, State instrumentality, State public utility and any other person or body, whether corporate or non-corporate, who or which, under the authority of an Act of Parliament administers or carries on for the benefit of the State any public social service or public utility.

Saving as to Government departments. Commission to confer and co-operate with other Departments. Inserted by No. 78 of 1948, s. 32, as s. 85, and incorporated and renumbered as s. 92 in 1949 reprint. Cf. No. 52 of 1945, s. 2, and No. 60 of 1945, s. 59.

(2) Save as otherwise expressly provided, nothing in this Act shall affect any rights, powers, authorities or duties of any Government department other than the Minister or the Commission or the Department.

(3) Where the exercise of any rights, powers or authorities or the discharge of any duties by the Minister or the Commission or the Department may affect the exercise of any rights, powers or authorities, or the discharge of any duties by any other Government department, the Minister or the Commission or the Department, as the case may be, shall so far as practicable confer and co-operate with that other department.

(4) Without prejudice to the power of direction and control of the Commission conferred upon the Minister, any question, difference, or dispute arising or about to arise between the Minister or the Commission or the Department and any other Government department with respect to the exercise of any rights, powers, or authorities, or the discharge of any duties by either or both of them, may be finally and conclusively determined by the Governor.

Documents, how authenticated.  
 Inserted by No. 78 of 1948, s. 32, as s. 86, and incorporated and renumbered as s. 93 in 1949 reprint.  
 Cf. No. 60 of 1945, s. 65.

93. Every notice, order, summons or other document requiring authentication by the Commission may be sufficiently authenticated without the seal of the Commission if signed in manner prescribed.

Power of classified Government Railway Officer to take certain statutory declarations.  
 Inserted by No. 44 of 1967 s. 3.

93A. (1) A statutory declaration made for the purpose of verifying the loss or destruction of a railway document may be made by the declarant before any classified Government Railway Officer.

(2) Where such a statutory declaration is so made it has the same force and effect, and in the case of a false declaration, the declarant is subject to the same penalty, as if the statutory declaration were made before a justice.

(3) In this section "railway document" means a passenger ticket, luggage check, cloak room ticket, railway pass or other document issued to a person by or on behalf of the Commission.

Power to direct prosecutions.  
 Inserted by No. 78 of 1948 s. 32, as s. 87, and incorporated and renumbered as s. 94 in 1949 reprint.  
 Cf. No. 23 of 1904, s. 81.  
 No. 60 of 1945, s. 66.

94. The Commission may order either generally or in any particular case that proceedings be taken for the recovery of any penalties incurred under, or for the punishment of any persons offending against this Act, or under or against any by-law or regulation.

Power of officer to represent Commission.  
 Inserted by No. 78 of 1948, s. 32, as s. 88, and incorporated and renumbered as s. 95 in 1949 reprint.  
 Amended by No. 37 of 1957, s. 8.  
 Cf. No. 60 of 1945, s. 67.

95. In all proceedings in any court of petty sessions any officer of the Commission appointed by the Commissioner in writing under his hand for that purpose may represent the Commission in all respects as though such officer were the party concerned.

96. (1) In any prosecution or legal proceeding under the provisions of this Act, or the by-laws or regulations instituted by or under the direction of the Commission, no proof shall be required (until evidence is given to the contrary) of—

- (a) the constitution of the Commission;
- (b) any order of the Commission to prosecute;
- (c) the particular or general appointment of any officer of the Commission to take proceedings against any person;
- (d) the powers of the officer to prosecute;
- (e) the appointment of the Commissioner, or any officer of the Commission, or
- [(f) *Repealed by Act No. 37 of 1957, s. 9.*]

(2) The production of—

- (a) a copy of the *Government Gazette* containing any rule, by-law, regulation, order, or notice purporting to have been made or given under any of the provisions of this Act, or
- (b) a copy purporting to be a true copy of any such rule, by-law, regulation, order, or notice certified as such under the hand of the Commissioner, or officer authorized in that behalf, of the Commission,

shall be evidence until the contrary is proved of the due making, existence, confirmation, approval and giving of such rule, by-law, regulation, order, or notice and of all preliminary steps necessary to give full force and effect to the same.

(3) In any prosecution or legal proceeding for an offence against this Act an averment that any real or personal property—

- (a) is or forms part of a railway;
- (b) is held for the purpose of a railway;
- (c) is used in connection with or belongs to a railway;

Proof of certain matters not required.  
 Inserted by No. 78 of 1948, s. 32, as s. 89, and incorporated and renumbered as s. 96 in 1949 reprint.  
 Amended by No. 37 of 1957, s. 9; No. 77 of 1980, s. 13.  
 Cf. No. 60 of 1945, s. 68.

(d) is vested in the Minister; or

(e) is in the possession, custody or control of the Commission,

shall be deemed to be proof in the absence of proof to the contrary.

Evidence of documents issued by the Commission. Inserted by No. 78 of 1948 s. 32, as s. 90, and incorporated and renumbered as s. 97 in 1949 reprint. Amended by No. 37 of 1957, s. 10. Cf. No. 60 of 1945, s. 69.

97. All documents whatever purporting to be issued or written by or under the direction of the Commission and purporting to be signed by the Commissioner or officer of the Commission authorized in that behalf by the Commission shall be received as evidence in all courts and before all persons acting judicially within the State, and shall without proof be deemed to have been issued or written by or under the direction of the Commission until the contrary is shown.

Regulations. Inserted by No. 78 of 1948, s. 32, as s. 91, incorporated and renumbered as s. 98 in 1949 reprint.

98. The Governor may make regulations prescribing all matters which by this Act are required or permitted to be prescribed, or are convenient for carrying into operation, or for facilitating the operation of the provisions of this Act.

## Section 3.

## THE FIRST SCHEDULE.

Date.	Title.	Extent of Repeal.
42 Vict., No. 31	The Railways Act, 1878 ....	The whole.
43 Vict., No. 10	The Railways Amendment Act, 1879 ....	The whole.
44 Vict., No. 17	The Railways Amendment Act, 1881 ....	The whole.
51 Vict., No. 1	The Railway Servants Act, 1887	The whole.
53 Vict., No. 1	The Railway Act, 1889 ....	The whole.
55 Vict., No. 34	An Act to further amend the Railways Act, 1878 ....	The whole.
58 Vict., No. 22	The Railway Acts Amendment Act, 1894 ....	The whole.
61 Vict., No. 32	The Railways Amendment Act, 1897 ....	The whole.
64 Vict., No. 24	The Railways Amendment Act, 1900 ....	The whole.
2 Edw. VII, No. 35	The Railways Acts Amendment Act, 1902 ....	The whole.



THE SECOND SCHEDULE.

Section  
25 (4).

Gold or silver coin, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or time-pieces of any description; trinkets, bills, bank-notes, orders, notes, or securities for payment of money; stamps, maps, writings, title-deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other material, furs, or lace, and goods of such other description as may be declared by the Governor by Order in Council.

