



Western Australia

Government Railways Act 1904

Reprinted as at 10 December 1999

Western Australia

Government Railways Act 1904

CONTENTS

Part I — Preliminary

1.	Short title	2
2.	Interpretation	2
2A.	Relationship to <i>Rail Safety Act 1998</i>	4
3.	Repeal	4
4.	Government railways vested in Minister	4
5.	District railways	6
7.	Certificate of Minister evidence of certain facts	6

Part II — Direction and management of the Western Australian Government Railways

Division 1 — The Western Australian Government Railways Commission

8.	Commission	7
8A.	Commission may join any body formed for the improvement of railways	10
8B.	Commission may enter into arrangements for carrying on business	11
8C.	Minister may give directions	12
8D.	Minister to have access to information in possession of Commission	13
9.	Protection of persons	14
10.	Penalty for participation in contracts	14
11.	Effect of other Acts on acceptance of office	15

Division 2 — Abolition of the body corporate by the name of the Commissioner and transfer of functions, powers, rights, benefits and obligations		
12.	Definitions	15
Part III — The direction, management, maintenance and control of the Western Australian Government Railways		
13.	Commission to manage railways	18
14.	Additions and improvements	18
15.	Power to protect railway	19
16.	Powers of Minister under <i>Public Works Act 1902</i> , delegated to Commission, and Commission authorized to exercise such powers	19
18.	Gates and cattle-stops	20
21.	Commission may use motor and other vehicles	21
22.	Commission may fix charges	22
23.	By-laws	24
24.	Provisions as to by-laws	32
25.	As to custody, carriage, and delivery of goods	33
26.	Special agreements	34
26A.	Special contracts	35
27.	Goods left at owner's risk	35
28.	Power to collect and deliver goods outside limits of railway	35
28A.	Open services	36
29.	Penalty for giving false consignment-note or way-bill	38
30.	Lien	39
31.	Goods may be sold on refusal to pay charges	39
32.	Goods left by unknown owner may be sold	39
33.	Application of proceeds of sale	40
34.	Conveyance of dangerous goods	40
35.	Actions by the Commission	41
36.	Actions against the Commission	41
37.	Commission deemed to be common carrier	41
38.	Plaintiff in actions for personal injuries to submit to examination	41
40.	No liability in certain cases	42

43.	Offences on railways punishable by fine or imprisonment	42
44.	Removal of passenger not paying proper fare	43
45.	Penalties for offences relating to tickets, etc.	44
46.	Penalty for travelling without payment of fare, etc.	45
47.	Definition of free pass	46
48.	Offences on railways punishable by fine	46
49.	Persons committing certain offences may be arrested	46
50.	Summary interference on breach of by-law	47
51.	Penalty for offences by railway servants	47
52.	Railway servants responsible for damage	48
53.	Railway servant may impound	49
53A.	Infringement notices	49

Part IV — Finance and accounts

54.	Funds of Commission	52
54AA.	Commission may provide credit to customers or suppliers	53
54B.	General borrowing powers	53
54C.	Evidence of compliance with requirements of the Act, and the use of finance	56
54D.	Specific State guarantees	57
54E.	Borrowing power, from Treasury sources	58
54EA.	Payment of profit to Treasurer	59
54F.	Power of Commission to borrow on debentures or stock	59
54G.	Trustee investments in debentures, etc.	64
54H.	Guarantees, generally	65
54J.	Charge on Loans Account and assets	65
54K.	Property vested in Minister may be charged with borrowings of the Commission	66
54L.	Power to make provision to pay off loans	66
54M.	Temporary investment of moneys	66
55.	Application of <i>Financial Administration and Audit Act 1985</i>	67
59.	Quarterly Railways Working Account	67

Part V — Agreements concerning railway property

61.	Use of railways by other rail service operators	68
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Contents

62.	Commission may lease railways	69
63.	Unused land or buildings may be leased	69
63A.	Lease of certain railway land	70
63B.	Lease of railway land to Co-operative Bulk Handling	71
64.	Lease for specified purposes	71
65.	Powers of Commission as to use of railways, wharves, etc.	72
66.	Additional powers to Commission as to use of railways, wharves, etc.	72
66A.	Tourist railways	73
67.	Grant of easements	74

Part VI — Sidings

68.	Commission may agree to work siding in connection with railway	76
69.	Commission may make agreements for running-powers	77

Part VII — Miscellaneous provisions

71.	Obstruction to traffic	78
72.	No railways to cross Government railways without consent	78
73.	Commission may appoint and dismiss certain officers	78
74.	Railway police	80
75.	Payment of salaries or wages may be proved by certified sheet	80
76.	Endowment and provident fund	81
77.	Appeal	83
78.	Constitution of Appeal Board	83
79.	Transitional provision	84
80.	Notice of appeal	85
81.	Decision of Board	86
82.	Procedure on appeals	86
83.	Powers of Appeal Board	87
84.	Regulations	88
85.	Regulation of lights	88
86.	No railway servant to engage in outside employment	89
87.	Persons unlawfully occupying railway premises may be removed	89
88.	Railway property not subject to rates, etc.	90

90.	Quarterly reports to Minister	90
92.	Saving as to Government departments	90
93.	Documents how authenticated	91
93A.	Power of classified Government Railway Officer to take certain statutory declarations	92
94.	Power to direct prosecutions	92
95.	Power of officer to represent Commission	92
96.	Proof of certain matters not required	92
97.	Evidence of documents issued by the Commission	94
98.	Regulations	94

First Schedule

Second Schedule

Notes

Defined Terms



Western Australia

**Reprinted under the
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at 10 December 1999**

Government Railways Act 1904

An Act to consolidate and amend the law relating to the maintenance and management of Government Railways and for connected purposes.

Part I — Preliminary

1. Short title

This Act may be cited as the *Government Railways Act 1904*¹.
[Section 1 inserted by No. 16 of 1987 s.5.]

2. Interpretation

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;

“**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;

“**Director General**” means the person holding or acting in the office of Director General of Transport in the Public Service of the State;

“**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*²;

“**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,

except that it does not include any railway or portion of a railway that is for the time being declared under section 66A not to be a Government railway for the purposes of this Act:

Provided that, for the purposes of sections 16 and 17, **“railway”** means a railway as defined in section 95 of the *Public Works Act 1902*, the construction whereof has been authorized in accordance with section 96 of such Act, but which has not become a railway or a Government railway as herein defined;

“Road” includes street, right-of-way, and thoroughfare;

s. 3

“the Account” means the Western Australian Government Railways General Fund Account referred to in section 54(2).

[Section 2 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; No. 54 of 1985 s.56; No. 16 of 1987 s.6; No. 87 of 1990 s.4.]

2A. Relationship to Rail Safety Act 1998

If there is a conflict or inconsistency between a provision of this Act, or subsidiary legislation made under this Act, and a provision of the *Rail Safety Act 1998* or subsidiary legislation made under that Act, the provision of that Act or subsidiary legislation prevails to the extent of the conflict or inconsistency.

[Section 2A inserted by No. 32 of 1998 s.64(2).]

3. Repeal

[Omitted under the Reprints Act 1984 s.7(4)(f).]

4. Government railways vested in Minister

- (1) All Government railways shall be vested in the Minister on behalf of Her Majesty.
- (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 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 1 August 1964 by the Company acting by its liquidator, shall be vested in the Minister on behalf of Her Majesty.

- (4) Subject to subsection (5), 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*³, the land shall be deemed not to have been alienated in fee simple from the Crown before 1 January 1899.

[Section 4 amended by No. 78 of 1948 s.7; No. 54 of 1965 s.2.]

5. District railways

- (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.
- (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.
- (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 72 to 84, inclusive, 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.
- (4) Subject to the provisions of this section, the provisions of this Act shall apply to district railways.

[Section 5 amended by No. 78 of 1948 ss.8 and 9.]

[6. Repealed by No. 32 of 1998 s.64(2).]

7. Certificate of Minister evidence of certain facts

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

8. Commission

- (1) For the purposes of this Act there shall be constituted a Commission under the name of The Western Australian Government Railways Commission.
- (2) The Commission shall be the chief executive officer of the Department, and, subject to the Minister except as provided in section 73, shall be responsible for the administration of this Act.
- (3) The Commission shall consist of one person appointed under subsection (3a) by the Governor as Commissioner of the Western Australian Government Railways.
- (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), on the happening of any vacancy in the office, appoint a fit and proper person to the vacant office.

[(4)—(7) repealed.]

- (8) (a) If the Commissioner —
 - (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;

Government Railways Act 1904

Part II Direction and management of the Western Australian Government Railways

Division 1 The Western Australian Government Railways Commission

s. 8

- (iv) resigns, subject to acceptance of such resignation by the Governor, 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 6 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 21 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), for the term for which he is appointed.
 - (b) A person shall not be appointed Commissioner for a term exceeding 7 years.
 - (c) The Commissioner may from time to time be reappointed for any further term or terms not exceeding 7 years for each term.
- (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 6 months next following a vacancy in the office of Commissioner.
- (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.
- (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.
- [(14)—(18) repealed.]*
- (19) The Commission shall be a body corporate, with perpetual succession and a common seal.

Government Railways Act 1904

Part II Direction and management of the Western Australian Government Railways

Division 1 The Western Australian Government Railways Commission

s. 8A

- (20) Notwithstanding anything in this section, to the extent that there is in the case of a person who is appointed under subsection (3a) to be the Commissioner and who is a member of the Senior Executive Service within the meaning of the *Public Service Act 1978*⁴ an inconsistency between this Act and that Act that Act shall prevail.

[Section 8 amended by No. 86 of 1953 s.2; No. 37 of 1957 s.3; No. 17 of 1958 s.3; No. 113 of 1987 s.32; No. 42 of 1997 s.8.]

8A. Commission may join any body formed for the improvement of railways

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

[Section 8A inserted by No. 47 of 1977 s.2.]

8B. Commission may enter into arrangements for carrying on business

- (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) 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), 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

Government Railways Act 1904

Part II Direction and management of the Western Australian Government Railways

Division 1 The Western Australian Government Railways Commission

s. 8C

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) is deemed to continue to be railway land for the purposes of this Act.

[Section 8B inserted by No. 12 of 1932 s.2.]

8C. Minister may give directions

- (1) The Minister may give directions in writing to the Commission with respect to the performance of its functions, either generally

or in relation to a particular matter, and the Commission shall give effect to any such direction.

- (2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable authority of the Commission under section 66 of the *Financial Administration and Audit Act 1985*.
- (3) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
[Section 8C inserted by No. 79 of 1990 s.4; amended by No. 41 of 1996 s.3.]

8D. Minister to have access to information in possession of Commission

- (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled to have information in the possession of the Commission and to have and retain copies of documents.
- (2) For the purposes of subsection (1) the Minister may —
 - (a) request the Commission to furnish information to the Minister;
 - (b) request the Commission to give the Minister access to information;
 - (c) for the purposes of paragraph (b) make use of the staff of the Commission to obtain the information and furnish it to the Minister.
- (3) The Commission shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
“document” includes any data that is recorded or stored mechanically, photographically, or electronically and any

Government Railways Act 1904

Part II Direction and management of the Western Australian Government Railways

Division 1 The Western Australian Government Railways Commission

s. 9

tape, disc or other device or medium on which it is recorded or stored;

“information” means documents or other information relating to the functions of the Commission being information, as so defined, specified, or of a description specified, by the Minister;

“parliamentary purposes” means the purpose of —

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

[Section 8D inserted by No. 79 of 1990 s.4.]

9. Protection of persons

- (1) 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.
- (2) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

[Section 9 amended by No. 37 of 1957 s.4; No. 41 of 1996 s.3.]

10. Penalty for participation in contracts

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 3 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 3 years.

[Section 10 amended by No. 78 of 1948 s.11; No. 37 of 1957 s.5; No. 17 of 1958 s.4.]

11. Effect of other Acts on acceptance of office

- (1) Acceptance of or acting in the office of the Commissioner by any person shall not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994* or the *Superannuation and Family Benefits Act 1938*, 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*¹.

[(2) repealed.]

[Section 11 inserted by No. 78 of 1948 s.12; amended by No. 36 of 1953 s.3; No. 37 of 1957 s.6; No. 32 of 1994 s.19.]

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

[Division 2 inserted by No. 78 of 1948 s.12.]

12. Definitions

- (1) For the purposes of this section —
“**appointed day**” means the day fixed for the coming into operation of the *Government Railways Act Amendment Act 1948*, namely, 1 July 1949;
“**function**” includes power, right, benefit and obligation.

Government Railways Act 1904

Part II Direction and management of the Western Australian Government Railways

Division 2 Abolition of the body corporate by the name of the Commissioner and transfer of functions, powers, rights, benefits and obligations

s. 12

- (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*, shall cease to exist, and thereafter the functions until then exercised and exercisable by that body corporate shall be transferred —
 - (a) as to matters of policy, to the Minister;
 - (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.
- (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.
- (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.
- (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*, having ceased to exist on 1 July 1949,

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

- (b) the respective functions mentioned in subsection (2),
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 30 June 1949, and
the coming into operation of the *Government Railways
Act Amendment Act 1953*¹, 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),

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

[Section 12 amended by No. 86 of 1953 s.4.]

**Part III — The direction, management, maintenance
and control of the Western Australian Government
Railways**

13. Commission to manage railways

- (1) Subject to the provisions of this Act, the *Rail Safety Act 1998* and of section 18E of the *Transport Co-ordination Act 1966*, the Commission shall have the management, maintenance, and control of every Government railway.
- (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.

[Section 13 amended by No. 78 of 1948 s.6; No. 94 of 1973 s.3; No. 38 of 1979 s.2; No. 64 of 1994 s.31; No. 32 of 1998 s.64(2).]

14. Additions and improvements

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*.

[Section 14 amended by No. 36 of 1933 s.4; No. 78 of 1948 s.6.]

15. Power to protect railway

Without in any way limiting the powers conferred by the *Public Works Act 1902*, 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 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.

[Section 15 amended by No. 36 of 1933 s.5; No. 78 of 1948 s.6.]

16. Powers of Minister under *Public Works Act 1902*, delegated to Commission, and Commission authorized to exercise such powers

- (1) Where any railway is authorized in accordance with section 96 of the *Public Works Act 1902*, 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,

s. 18

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.

[Section 16 amended by No. 78 of 1948 s.6.]

[17. Repealed by No. 32 of 1998 s.64(2).]

18. Gates and cattle-stops

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: —

- (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 40 metres of the middle line of such railway.
- (3) The Commission may agree with the local government 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 government 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 48 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.

[Section 18 amended by No. 78 of 1948 s.6; No. 94 of 1972 s.4 (as amended by No. 19 of 1973); No. 14 of 1996 s.4.]

[19, 20. Repealed by No. 32 of 1998 s.64(2).]

21. Commission may use motor and other vehicles

- (1) In addition to any other powers conferred upon the Commission it may, with the consent of the Minister —
 - (a) construct, purchase and otherwise acquire and maintain any motor or other vehicle; and
 - (b) subject to the provisions of the *Transport Co-ordination Act 1966*, and of the *Traffic Act 1919*⁵, use them for the purpose of conveying passengers and goods on any

s. 22

public highway and on land referred to in paragraph (1) of the definition “Railway” or “Government railway” in section 2.

- (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).

[Section 21 amended by No. 78 of 1948 s.6; No. 54 of 1985 s.57.]

22. Commission may fix charges

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

- (1) Fix scales of charges to be paid —
 - (a) by persons carried on or using a railway; or
 - (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.
 - (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:

s. 23

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.

[Section 22 amended by No. 29 of 1907 s.3; No. 78 of 1948 ss.6 and 14; No. 55 of 1960 s.2.]

23. By-laws

- (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;
 - (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) subject to section 55, 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;

Government Railways Act 1904

Part III The direction, management, maintenance and control of the
Western Australian Government Railways

s. 23

- (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) 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

s. 23

person 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), for authorizing persons appointed by the Commission to remove into custody any vehicle left on a railway for a period in excess of 7 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

Government Railways Act 1904

Part III The direction, management, maintenance and control of the
Western Australian Government Railways

s. 23

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, credited to the Account.

- (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) *deleted*]
- (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;

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

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.

[Section 23 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; No 79 of 1990 s.5; No. 87 of 1990 s.5⁶; No. 64 of 1994 s.32; No. 49 of 1996 s.64.]

s. 24

24. Provisions as to by-laws

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 10 days after the publication thereof, if Parliament is then sitting, and, if not, then within 10 days after the commencement of its next sitting.
- [(3) *repealed*]
- (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 \$250 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 credited to the Account.

- (8) Any other by-law may impose a penalty not exceeding \$200 for any breach thereof.

[Section 24 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; No. 87 of 1990 s.6⁷; No. 49 of 1996 s.64.]

25. As to custody, carriage, and delivery of goods

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.
- (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 section 22(3), 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.
- (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, \$40;
 - (b) for any neat cattle, per head, \$30;
 - (c) or any sheep, pig, or other small animal, per head, \$2,

s. 26

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 22 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.

- (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 \$50, 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 22 (if any) for the extra risk shall have been paid and a receipt given for the same.

[Section 25 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.]

26. Special agreements

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

- (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.

[Section 26 amended by No. 78 of 1948 s.6.]

26A. Special contracts

Notwithstanding the provisions of section 22, 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.

[Section 26A inserted by No. 55 of 1960 s.6.]

27. Goods left at owner's risk

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.

[Section 27 amended by No. 78 of 1948 s.6.]

28. Power to collect and deliver goods outside limits of railway

- (1) Subject to the provisions of subsection (2), the Commission may, from time to time, —
 - (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:

Government Railways Act 1904

Part III The direction, management, maintenance and control of the
Western Australian Government Railways

s. 28A

- (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 5 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 20 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 36 of the *Interpretation Act 1918*⁸, applied and neither House of Parliament passes a resolution disallowing the contract, of which resolution notice is given, within 14 sitting days (whether or not those days, or some or 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).

[Section 28 amended by No. 78 of 1948 s.6; No. 66 of 1975 s.2.]

28A. Open services

- (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, dispatch, carriage and delivery thereof.

- (2) In addition to any powers conferred on the Commission by this Act, wherever section 34 of the *Transport Co-ordination Act 1966*⁹ 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 22 and 25, the charges applicable in relation to any service referred to in subsection (2) 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) 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*¹ 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 14 days after the commencement of the service, submit to the Director General of Transport in writing particulars of such service.
- (7) Where the Director General of Transport receives particulars of a service pursuant to subsection (6) the Director General of Transport may do one or both of the following —
 - (a) request further particulars of the service or other information that is relevant thereto;

Government Railways Act 1904

Part III The direction, management, maintenance and control of the
Western Australian Government Railways

s. 29

- (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 14 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.

[Section 28A inserted by No. 77 of 1980 s.5; amended by No. 54 of 1985 s.58.]

29. Penalty for giving false consignment-note or way-bill

- (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 \$100.
- (2) If in any such document there is any under statement 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, 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.

[Section 29 amended by No. 113 of 1965 s.8.]

30. Lien

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.

[Section 30 amended by No. 78 of 1948 s.6.]

31. Goods may be sold on refusal to pay charges

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.

[Section 31 amended by No. 78 of 1948 s.6.]

32. Goods left by unknown owner may be sold

- (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.
- (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

s. 33

goods cause offence or create a nuisance may cause them to be destroyed at the expense of the owner.

[Section 32 amended by No. 78 of 1948 s.6.]

33. Application of proceeds of sale

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 3 months after such sale; but unless such claim is so established, the amount shall be credited to the Account.

[Section 33 amended by No. 87 of 1990 s.7¹⁰; No. 49 of 1996 s.64.]

34. Conveyance of dangerous goods

- (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 for any term not exceeding 6 months, or to a penalty not exceeding \$200.

- (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.

[Section 34 amended by No. 78 of 1948 ss.6 and 16; No. 55 of 1960 s.7; No. 113 of 1965 s.8; No. 51 of 1992 s.16(1).]

35. Actions by the Commission

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.

[Section 35 amended by No. 78 of 1948 s.6.]

36. Actions against the Commission

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.

[Section 36 amended by No. 78 of 1948 s.6.]

37. Commission deemed to be common carrier

[(1) and (2) repealed]

- (3) Subject to sections 17 and 28A, 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.

[Section 37 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.]

38. Plaintiff in actions for personal injuries to submit to examination

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

s. 40

Commission, at all such reasonable times as the Commission may require.

[Section 38 amended by No. 78 of 1948 s.6.]

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

40. No liability in certain cases

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.

[Section 40 amended by No. 29 of 1907 s.5; No. 78 of 1948 s.6.]

[41, 42. Repealed by No. 32 of 1998 s.64(2).]

43. Offences on railways punishable by fine or imprisonment

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 a penalty of \$600.

[Section 43 amended by No. 55 of 1960 s.10; No. 113 of 1965 s.8; No. 77 of 1980 s.8; No. 51 of 1992 s.16(1); No. 78 of 1995 s.147.]

44. Removal of passenger not paying proper fare

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.

[Section 44 amended by No. 78 of 1948 s.18.]

45. Penalties for offences relating to tickets, etc.

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
- (5) is brought before any 2 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 for any period not exceeding 6 months, or to a penalty not exceeding \$200.

[Section 45 amended by No. 29 of 1907 s.6; No. 78 of 1948 s.6; No. 113 of 1965 s.8; No. 77 of 1980 s.9; No. 51 of 1992 s.16(1).]

46. Penalty for travelling without payment of fare, etc.

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 \$200, in addition to the amount due as railway fare or difference in railway fare.

[Section 46 amended by No. 55 of 1960 s.11; No. 113 of 1965 s.8; No. 77 of 1980 s.10.]

s. 47

47. Definition of free pass

In the preceding sections the term “**free pass**” includes any token or privilege pass or requisition form for the same respectively.

48. Offences on railways punishable by fine

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

- (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 \$200.

[Section 48 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.]

49. Persons committing certain offences may be arrested

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.

[Section 49 amended by No. 78 of 1948 s.18.]

50. Summary interference on breach of by-law

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.

[Section 50 amended by No. 78 of 1948 s.18.]

51. Penalty for offences by railway servants

- (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

s. 52

such person so offending, or any person counselling, aiding, or assisting in such offence, and convey him before any 2 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 for any period not exceeding 6 months, or to a penalty not exceeding \$200.

[Section 51 amended by No. 55 of 1960 s.13; No. 51 of 1992 s.16(1).]

52. Railway servants responsible for damage

- (1) Every person employed on or about a railway shall be responsible for any damage caused by his wrongdoing 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.
- (2) Before any loss is deducted, or commenced to be deducted, pursuant to subsection (1) from any salary, wages or emolument due to a person who is a permanent employee within the meaning of section 77, 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) 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 77, and for the purposes of section 80 the date on which the person received that notice shall be deemed to be the date of the decision appealed against.

[Section 52 amended by No. 56 of 1926 s.2; No. 72 of 1972 s.3.]

53. Railway servant may impound

Any person employed on or about any railway may impound cattle trespassing on such railway; and any act, matter, or thing required under Part XX of the *Local Government (Miscellaneous Provisions) Act 1960*, 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.

[Section 53 amended by No. 78 of 1948 s.6; No. 14 of 1996 s.4.]

53A. Infringement notices

- (1) A reference in subsection (2), (3), (5) or (7) to an **“authorized person”** is a reference to a person appointed under subsection (11) to be an authorized person for the purposes of the subsection in which the term is used.
- (2) An authorized person who has reason to believe that a person has committed a prescribed offence against this Act or the by-laws, other than a by-law made under section 23(23b), may, at or about the time the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.
- (3) An infringement notice under this section shall be in the prescribed form and shall in every case —
 - (a) contain a description of the alleged offence;
 - (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorized person within a period of 28 days after the giving of the notice; and
 - (c) inform the alleged offender as to who are authorized persons for the purposes of receiving payment of modified penalties.

Government Railways Act 1904

Part III The direction, management, maintenance and control of the
Western Australian Government Railways

s. 53A

- (4) In an infringement notice under this section the amount specified as being the modified penalty for the offence referred to in the notice shall be the amount that was the prescribed modified penalty under section 23(1)(28a) at the time the alleged offence is believed to have been committed.
- (5) An authorized person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.
- (6) Where the modified penalty specified in an infringement notice under this section has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn, the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (7) An authorized person may, whether or not the modified penalty has been paid, withdraw an infringement notice under this section within 28 days after the giving of the notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (8) Where an infringement notice under this section is withdrawn after the modified penalty has been paid, the amount shall be refunded.
- (9) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (8), be dealt with as if it were a fine imposed by a court as a penalty for an offence.
- (10) Payment of a modified penalty shall not be regarded as an admission for the purposes of any proceedings, whether civil or criminal.
- (11) The Commission may, in writing, appoint persons or classes of persons to be authorized persons for the purposes of

subsection (2), (3), (5) or (7) or for the purposes of 2 or more of those subsections, but a person who is authorized to give infringement notices under subsection (2) is not eligible to be an authorized person for the purposes of any of the other subsections.

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

[Section 53A inserted by No. 64 of 1994 s.33; amended by No. 78 of 1995 s.51.]

Part IV — Finance and accounts

[Heading inserted by No. 93 of 1978 s.3.]

54. Funds of Commission

- (1) The funds available for the purpose of enabling the Commission to carry out its functions consist of moneys —
 - (a) appropriated from time to time by Parliament to that purpose;
 - (b) derived from time to time as income by the Commission from business carried on by it under this Act; or
 - (c) from time to time borrowed under this Part by, or otherwise lawfully paid to or received by, the Commission.
- (2) The moneys referred to in subsection (1) shall be credited to an account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, to be called the Western Australian Government Railways General Fund Account.
- (3) All expenditure incurred by the Commission for the purpose of its functions shall be charged to the Account and moneys charged to the Account shall be applied only for the purposes of this Act.
- (4) Notwithstanding anything in subsection (3), the Commission may, with the approval of the Governor, pay to or for the benefit of any persons employed on railways the whole or any part of any moneys credited to the Account under —
 - (a) section 6(2) of the *Government Railways Amendment Act 1990*; or
 - (b) section 24(7).
- (5) Notwithstanding anything in this section, the Commission may, with the approval of the Treasurer and subject to such terms and conditions as the Treasurer approves, open and maintain one or more bank accounts in the name of the Commission with a bank

or banks outside Australia for the purpose of holding and applying moneys borrowed under this Part outside Australia.

- (6) All moneys held in a bank account maintained under subsection (5) may, until required by the Commission for carrying out its functions, be temporarily invested in such manner as the Treasurer directs, and all interest derived from that investment shall be paid into and placed to the credit of that bank account.
- (7) Nothing in this section shall be taken to allow the application of moneys for purposes other than those authorized by this Act.

[Section 54 inserted by No. 87 of 1990 s.8; amended by No. 49 of 1996 s.64.]

[54A. Repealed by No. 87 of 1990 s.8¹¹.]

54AA. Commission may provide credit to customers or suppliers

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 68, 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.

[Section 54AA inserted by No. 12 of 1982 s.3.]

54B. General borrowing powers

- (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 —
 - (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;

s. 54B

- (ii) obtain the provision of credit in the normal course of business (whether or not such credit is to be secured); or
 - (iii) otherwise arrange for financial accommodation to be extended to the Commission,
upon such terms and conditions, and in such manner (being a manner which is accepted as appropriate for trading corporations generally in the normal course of business practice) as the Treasurer may, and is hereby 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), 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 subsection 1(a) 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.

s. 54C

- (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.

[Section 54B inserted by No. 93 of 1978 s.5.]

54C. Evidence of compliance with requirements of the Act, and the use of finance

- (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.

[Section 54C inserted by No. 93 of 1978 s.5.]

54D. Specific State guarantees

- (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.
- (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 determining 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;

s. 54E

- (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.
- (4) The Treasurer shall, as soon as practicable after a guarantee is given under this section, inform in writing the Clerk of each House of Parliament of the giving of that guarantee and shall, if requested by either House of Parliament to produce that guarantee for the information of that House, within a period of 60 days after the making of that request —
- (a) cause to be laid a certified copy of the document setting out that guarantee before that House; or
 - (b) if that House is not sitting at the relevant time within that period, cause to be delivered a certified copy of the document referred to in paragraph (a) to the Clerk of that House.
- (5) In subsection (4), a reference to a certified copy of a document is a reference to a copy certified by the Treasurer to be a true copy of the original of the document.

[Section 54D inserted by No. 93 of 1978 s.5; amended by No. 87 of 1990 s.9.]

54E. Borrowing power, from Treasury sources

- (1) If the money standing to the credit of the Account is insufficient at any time to meet expenditure incurred or proposed to be incurred by the Commission in the performance of its functions the Commission may borrow from the Treasurer 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,

[Section 54E inserted by No. 93 of 1978 s.5; amended by No. 98 of 1985 s.3; No. 87 of 1990 s.10.]

54EA. Payment of profit to Treasurer

- (1) The Treasurer may, after the end of any financial year, require the Commission to pay to him to be credited to the Consolidated Fund such percentage of the net profit as he determines is appropriate and the Commission shall forthwith make that payment.
- (2) For the purposes of subsection (1) -
 - (a) **“net profit”** means the net profit of the Commission as certified to by the Auditor General; and
 - (b) in the determination of net profit as defined by paragraph (a), full allowance shall be made for interest and depreciation of the assets of the Commission.

[Section 54EA inserted by No. 87 of 1990 s.11; amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

54F. Power of Commission to borrow on debentures or stock

- (1) Subject to subsection (2) 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;
 - (ii) redeeming any loans owing by the Commission;
or

s. 54F

- (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”;
 - (c) partly as provided by paragraph (a) and partly as provided by paragraph (b); 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

s. 54F

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.
- (12) When it is necessary to have resort to any sinking fund referred to in subsection (11) 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.

s. 54G

- (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.

[Section 54F inserted by No. 93 of 1978 s.5.]

54G. Trustee investments in debentures, etc.

- (1) Debentures and inscribed stock issued and created or issued by the Commission under this Act shall have the status of Government securities of the State of Western Australia.

[(2) repealed]

- (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.

[Section 54G inserted by No. 93 of 1978 s.5; amended by No. 1 of 1997 s.18; No. 26 of 1999 s.85.]

54H. Guarantees, generally

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 charged to the Consolidated Fund, and any sums received or recovered by the Treasurer from the Commission or otherwise in respect of an amount so charged shall be credited to the Consolidated Fund.

[Section 54H inserted by No. 93 of 1978 s.5; amended by No. 98 of 1985 s.3; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

54J. Charge on Loans Account and assets

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 and shall be a floating charge secured upon the Account and the other assets of the Commission, and the 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.

[Section 54J inserted by No. 93 of 1978 s.5; amended by No. 87 of 1990 s.12.]

s. 54K

54K. Property vested in Minister may be charged with borrowings of the Commission

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,

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.

[Section 54K inserted by No. 93 of 1978 s.5.]

54L. Power to make provision to pay off loans

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.

[Section 54L inserted by No. 93 of 1978 s.5.]

54M. Temporary investment of moneys

Any moneys borrowed by the Commission otherwise than under section 54E 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.

[Section 54M inserted by No. 93 of 1978 s.5; amended by No. 98 of 1985 s.3.]

55. Application of *Financial Administration and Audit Act 1985*

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

[Section 55 inserted by No. 98 of 1985 s.3.]

[56-58. Repealed by No. 98 of 1985 s.3.]

59. Quarterly Railways Working Account

- (1) The Commission shall, once in every 3 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.
- (2) 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 12 months next ensuing.
- (3) All such accounts shall be published in the *Government Gazette*, and shall be laid before Parliament.

[Section 59 amended by No. 78 of 1948 s.6; No. 87 of 1990 s.13.]

[60. Repealed by No. 87 of 1990 s.14.]

Part V — Agreements concerning railway property

[Heading inserted by No. 16 of 1987 s.7.]

61. Use of railways by other rail service operators

- (1) The Commission may, with the approval of the Minister, enter into an agreement under which another person is entitled to use a railway or portion of a railway for the purpose of operating a rail service.
- (2) The agreement is to be for a period not exceeding 21 years, but this subsection does not prevent a further agreement from being entered into when the agreement comes to an end.
- (3) The agreement may include such conditions as the Commission thinks fit and, without limiting the other kinds of conditions that may be included, it may include conditions as to —
 - (a) payments of money;
 - (b) maintenance of, or improvements to be made to, the railway;
 - (c) termination of any right given by the agreement, without any entitlement to compensation, upon the breach of a condition of the agreement or if the Minister considers it to be in the public interest.
- (4) For purposes connected with the operation of a rail service in accordance with the agreement, the Commission may, with the approval of the Minister, dispose of, or lease or otherwise grant rights to use, real or personal property.
- (5) This section applies despite anything else in this Act or any other enactment other than the *Rail Safety Act 1998*.

[Section 61 inserted by No. 47 of 1996 s.2; amended by No. 32 of 1998 s.64(2).]

62. Commission may lease railways

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 30 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 *Rail Safety Act 1998*, 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.

[Section 62 amended by No. 78 of 1948 s.6; No. 32 of 1998 s.64(2).]

63. Unused land or buildings may be leased

- (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.
- (2) Every such lease shall be granted for a period not exceeding 21 years unless a longer period is authorized under subsection (3), and on such terms and conditions as the Commission thinks fit.

s. 63A

- (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 21 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 21 years but not exceeding 50 years as the Minister specifies in the authorization.

[Section 63 amended by No. 15 of 1939 s.2; No. 78 of 1948 s.6; No. 61 of 1955 s.3.]

63A. Lease of certain railway land

- (1) The Commission may, with the approval of the Governor, let on lease for any purpose all or part of the railway land described in the Table that is 5 metres or more above the surface of the railway track.

Table

The portion of railway land bounded at its southern end by the north-eastern boundary of Joondalup Drive and the north-western boundary of Grand Boulevard, as shown on Office of Titles Plan 19050, near the intersection of those roads, and at its other end by the eastern boundary of Joondalup Drive, as shown on Office of Titles Plan 17248, near its intersection with Shenton Avenue.

- (2) The Commission may, with the approval of the Governor, let on lease for any purpose all or part of any railway land that is above a railway tunnel within the Subiaco redevelopment area.
- (3) A lease may be granted under this section for a period not exceeding 99 years on such terms and conditions as the Commission thinks fit.
- (4) Land may only be let on lease under this section if it is not required for railway purposes.

- (5) In subsection (2) —
“Subiaco redevelopment area” means the area referred to in
Schedule 1 to the *Subiaco Redevelopment Act 1994*.

[Section 63A inserted by No. 33 of 1998 s.4.]

63B. Lease of railway land to Co-operative Bulk Handling

- (1) The Commission may, with the approval of the Governor, let on lease any railway land, and any buildings, workshops or other structures on the land, to Co-operative Bulk Handling Limited for purposes connected with its grain storage and handling business.
- (2) A lease may be granted under subsection (1) for a period not exceeding 99 years on such terms and conditions as the Commission thinks fit.
- (3) Without limiting subsection (2), a lease under subsection (1) may make provision for Co-operative Bulk Handling Limited to have an option to purchase all or part of the land the subject of the lease.
- (4) Land may only be let on lease under subsection (1) if it is not required for railway purposes.

[Section 63B inserted by No. 33 of 1998 s.4.]

64. Lease for specified purposes

- (1) The Commission may from time to time, after calling tenders, lease for any period not exceeding 3 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*², of liquor pursuant to a railway refreshment room licence granted under 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.

s. 65

- (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.

[Section 64 inserted by No. 61 of 1970 s.4.]

65. Powers of Commission as to use of railways, wharves, etc.

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 12 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.

[Section 65 amended by No. 78 of 1948 s.6.]

66. Additional powers to Commission as to use of railways, wharves, etc.

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.

[Section 66 amended by No. 78 of 1948 s.6.]

66A. Tourist railways

- (1) Where a railway or portion of a railway is no longer required for use by the Commission, the Governor may, by order published in the *Government Gazette*—
 - (a) declare that the railway or portion of a railway, as the case may be, is not, while the order remains in force, a Government railway for the purposes of this Act; and
 - (b) subject to such conditions as are specified in the order, grant to any person the right, while the order is in force, to occupy that railway or portion of a railway for a tourist railway, and, subject to the *Rail Safety Act 1998*, to manage, operate and maintain a tourist railway service thereon.

s. 67

[(2), (3) repealed]

- (4) The Governor may, by a subsequent order published in the *Government Gazette*—
- (a) vary an order under subsection (1) with the consent of any person whose rights under the order are affected;
 - (b) revoke an order under subsection (1) in such circumstances, if any, as are specified in the order.

[Section 66A inserted by No. 16 of 1987 s.8; amended by No. 32 of 1998 s.64(2)¹².]

[66B. *Repealed by No. 32 of 1998 s.64(2).]*

67. Grant of easements

- (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,
- (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 subsection (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.

[Section 67 amended by No. 78 of 1948 s.6.]

Part VI — Sidings

68. Commission may agree to work siding in connection with railway

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 7 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) repealed]*
- (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 3 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 2 last preceding subsections hereof.

[Section 68 amended by No. 78 of 1948 s.6; No. 12 of 1982 s.4; No. 32 of 1998 s.64(2).]

69. Commission may make agreements for running-powers

- (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.
- (2) No such agreement shall have effect for more than 3 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.

[Section 69 amended by No. 78 of 1948 s.6.]

Part VII — Miscellaneous provisions

[70. *Repealed by No. 32 of 1998 s.64(2).*]

71. Obstruction to traffic

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.

[Section 71 amended by No. 78 of 1948 s.6.]

72. No railways to cross Government railways without consent

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.

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.

[Section 72 amended by No. 78 of 1948 s.6.]

73. Commission may appoint and dismiss certain officers

- (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:

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 31 or 32 of the *Traffic Act 1919*⁵, 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.

s. 74

- (3) Notwithstanding anything in this section, to the extent that there is in the case of a person who is appointed under subsection (1) to be an officer or servant of the Department and who is a member of the Senior Executive Service within the meaning of the *Public Service Act 1978*⁴ an inconsistency between this Act and that Act that Act shall prevail.

[Section 73 amended by No. 78 of 1948 s.23; No. 61 of 1955 s.4; No. 55 of 1960 s.14; No. 113 of 1987 s.32.]

74. Railway police

- (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 or imposed under the provisions of this section or any by-law made pursuant to section 23(26a) shall render the Crown or the Commission or special constable, as the case may be, subject to any liability in respect thereof.

[Section 74 amended by No. 78 of 1948 s.6; No. 55 of 1960 s.15.]

75. Payment of salaries or wages may be proved by certified sheet

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.

[Section 75 inserted by No. 29 of 1907 s.14.]

76. Endowment and provident fund

- (1) The formation under the *Companies (Western Australia) Code*¹³ of a company named Western Australian Government Railways Employees' Endowment Fund Pty Ltd principally for the purposes of —
- (a) the transfer to it under section 34 of the *Associations Incorporation Act 1987* of the undertakings of the former funds; and
 - (b) carrying on the undertakings referred to in paragraph (a), and the doing of any act or thing related or incidental to the formation of that company are validated and declared to have been lawful.
- (2) The Commission may —
- (a) hold shares in the company;
 - (b) at the request of the company —
 - (i) provide the company with the services of staff of the Commission at such cost as the Commission determines; and
 - (ii) do anything else that it considers necessary or expedient to assist in the administration of the company;
- and
- (c) pay any reasonable administrative expenses incurred by the company during the financial year commencing on 1 July 1989,
- and the doing of any of those things by the Commission before the commencement of the *Government Railways Amendment Act (No. 2) 1990*¹ is validated and declared to have been lawful

s. 77

except that a charge shall not be made in respect of the services of staff provided before 1 July 1990.

- (3) The aggregation by the company of the former funds into a single fund known as the Western Australian Government Railways Employees' Endowment and Provident Fund and administered in accordance with the rules of that fund as referred to in the trust deed is validated and declared to have been lawful and upon the aggregation the rights and entitlements of persons as members of the former funds shall be taken to have ceased and been replaced by rights and entitlements as members of the new fund in accordance with the trust deed.

- (4) In this section —

“the company” means the company referred to in subsection (1);

“the former funds” means the funds formerly established under section 23(1) (27) and incorporated under the *Associations Incorporation Act 1895*¹⁴ as Western Australian Government Railways Employees' Endowment Fund Incorporated and Western Australian Government Railways Employees' Provident Fund Incorporated;

“the new fund” means the Western Australian Government Railways Employees' Endowment and Provident Fund referred to in subsection (3);

“the trust deed” means the deed of trust dated 30 January 1990 between Western Australian Government Railways Employees' Endowment Fund Incorporated, Western Australian Government Railways Employees' Provident Fund Incorporated, Western Australian Government Railways Employees' Endowment Fund Pty Ltd, and the Commission.

[Section 76 inserted by No. 79 of 1990 s.6¹⁵.]

77. Appeal

Any person who, being permanently employed on a Government Railway, is, under section 73, —

- (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 73 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 3 months.

[Section 77 amended by No. 78 of 1948 ss.6 and 25; No. 61 of 1955 s.5; No. 38 of 1958 s.3.]

78. Constitution of Appeal Board

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

s. 79

- (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 subsection (1)(c) 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.

[Section 78 inserted by No. 29 of 1907 s.8; amended by No. 56 of 1926 s.3; No. 78 of 1948 ss.6 and 26; No. 13 of 1954 s.2; No. 8 of 1959 s.2; No. 27 of 1976 s.3.]

79. Transitional provision

The term of office of every person who is entitled to be a member of an Appeal Board pursuant to section 78(1)(c) as in force immediately before the coming into operation of the *Government Railways Act Amendment Act 1976*¹ 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*¹ may continue in office for the purpose of completing and determining that appeal.

[Section 79 inserted by No. 27 of 1976 s.4.]

80. Notice of appeal

Notice of every appeal to the Appeal Board shall be lodged with the Commission within 14 days of the date of the decision appealed against, and the appeal shall be heard by the Appeal Board within 30 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 78 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 30 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 30 days or within such extended period as is agreed the Appeal Board may allow any adjournment.

[Section 80 amended by No. 56 of 1926 s.5; No. 27 of 1976 s.5; No. 77 of 1980 s.12.]

s. 81

81. Decision of Board

The decision of any 2 members of the Appeal Board shall be the decision of the Appeal Board.

[Section 81 amended by No. 29 of 1907 ss.10 and 8(2).]

82. Procedure on appeals

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

- (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 32 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;
 - (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 \$20.
- (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.

[Section 82 amended by No. 29 of 1907 s.12; No. 56 of 1926 s.6; No. 78 of 1948 s.28; No. 113 of 1965 s.8; No. 27 of 1976 s.6; No. 38 of 1979 s.4.]

83. Powers of Appeal Board

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.

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.

s. 84

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.

[Section 83 amended by No. 78 of 1948 s.6.]

84. Regulations

The Governor may make regulations —

- (1) Relating to the appointment and attendance of persons appointed to the Appeal Board pursuant to section 78(1)(c).
- (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 77 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 provisions of sections 80, 82 and 83, with such adaptations, as are considered necessary or desirable.

[Section 84 amended by No. 78 of 1948 s.6; No. 38 of 1958 s.4; No. 27 of 1976 s.7.]

85. Regulation of lights

[(1) - (10) repealed]

- (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*.

[Section 85 amended by No. 78 of 1948 s.6; No. 113 of 1965 s.8; No. 14 of 1996 s.4; No. 32 of 1998 s.64(2).]

86. No railway servant to engage in outside employment

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.

[Section 86 inserted by No. 29 of 1907 s.13; amended by No. 78 of 1948 s.6; No. 17 of 1958 s.5.]

87. Persons unlawfully occupying railway premises may be removed

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.

[Section 87 amended by No. 78 of 1948 s.6.]

88. Railway property not subject to rates, etc.

- (1) Subject to subsection (2), no rate, tax, or assessment shall be made, charged, or levied upon any Government railway unless the contrary is expressly provided in any Act.
- (2) Land leased under section 63 (except when it is leased to Co-operative Bulk Handling Limited) or section 63A is rateable land for the purposes of the *Local Government Act 1995*.

[Section 88 amended by No. 78 of 1948 s.6; No. 14 of 1996 s.4; No. 33 of 1998 s.5.]

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

90. Quarterly reports to Minister

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.

[Section 90 amended by No. 78 of 1948 s.6; No. 94 of 1972 s.4 (as amended by No. 19 of 1973).]

[91. Repealed by No. 98 of 1985 s.3.]

92. Saving as to Government departments

- (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.

- (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.

[Section 92 inserted by No. 78 of 1948 s.32.]

93. Documents how authenticated

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.

[Section 93 inserted by No. 78 of 1948 s.32.]

s. 93A

93A. Power of classified Government Railway Officer to take certain statutory declarations

- (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.

[Section 93A inserted by No. 44 of 1967 s.3.]

94. Power to direct prosecutions

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.

[Section 94 inserted by No. 78 of 1948 s.32.]

95. Power of officer to represent Commission

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.

[Section 95 inserted by No. 78 of 1948 s.32; amended by No. 37 of 1957 s.8.]

96. Proof of certain matters not required

- (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]

(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;
- (d) is vested in the Minister; or

s. 97

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

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

[Section 96 inserted by No. 78 of 1948 s.32; amended by No. 37 of 1957 s.9; No. 77 of 1980 s.13.]

97. Evidence of documents issued by the Commission

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.

[Section 97 inserted by No. 78 of 1948 s.32; amended by No. 37 of 1957 s.10.]

98. Regulations

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 98 inserted by No. 78 of 1948 s.32.]

[First Schedule omitted under the Reprints Act 1984 s.7(4)(f).]

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.



Notes

¹ This reprint is a compilation as at 10 December 1999 of the *Government Railways Act 1904* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Government Railways Act 1904</i>	23 of 1904	16 January 1904	16 January 1904	
<i>Government Railways Amendment Act 1907</i>	29 of 1907	20 December 1907	Sections 8, 9, 10 and 11: 16 October 1908 (see section 8(2) and <i>Gazette</i> 9 October 1908 p.2705); balance: on assent	
<i>Government Railways Act Amendment Act 1926</i>	56 of 1926	24 December 1926	24 December 1926	
<i>Government Railways Act Amendment Act 1933</i>	36 of 1933	4 January 1934	12 February 1934 (see section 2 and <i>Gazette</i> 9 February 1934 p.143)	
<i>Limitation Act 1935, Schedule 2</i>	35 of 1935	7 January 1936	The relevant amendments as set out in the Second Schedule took effect on 1 March 1955 (see section 2 of Act No. 73 of 1954 and <i>Gazette</i> 18 February 1955 p.343)	(Amended by the <i>Limitation Act Amendment Act 1954</i> (No.73 of 1954, section 8))

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Government Railways Act Amendment Act 1939</i>	15 of 1939	22 November 1939	22 November 1939	
<i>Government Railways Act Amendment Act 1947</i>	72 of 1947	10 January 1948	10 January 1948	
<i>Government Railways Act Amendment Act 1948</i>	78 of 1948	25 January 1949	1 July 1949 (see section 2 and <i>Gazette</i> 1 July 1949 p.1410)	
<i>Government Railways Act Amendment Act 1951</i>	32 of 1951	19 December 1951	19 December 1951	
<i>Government Railways Act Amendment Act 1953</i>	86 of 1953	18 January 1954	18 January 1954	
<i>Government Railways Act Amendment Act 1954</i>	13 of 1954	14 September 1954	14 September 1954	
<i>Government Railways Act Amendment Act 1955</i>	61 of 1955	13 December 1955	13 December 1955	
<i>Government Railways Act Amendment Act 1957</i>	37 of 1957	18 November 1957	18 November 1957	Sections 11,12 Validation/ Savings ¹⁷
<i>Government Railways Act Amendment Act 1958</i>	17 of 1958	6 October 1958	23 October 1959 (see section 2 and <i>Gazette</i> 23 October 1959 p.2620)	

Government Railways Act 1904

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Government Railways Act Amendment Act (No. 2) 1958</i>	38 of 1958	11 December 1958	24 December 1958 (see section 2 and <i>Gazette</i> 24 December 1958 p.3372)	
<i>Government Railways Act Amendment Act 1959</i>	8 of 1959	8 September 1959	8 September 1959	
<i>Government Railways Act Amendment Act 1960</i>	55 of 1960	2 December 1960	2 December 1960	
<i>Government Railways Act Amendment Act 1963</i>	27 of 1963	13 November 1963	13 November 1963	
<i>Government Railways Act Amendment Act 1965</i>	54 of 1965	9 November 1965	9 November 1965	
<i>Government Railways Act Amendment Act 1967</i>	44 of 1967	21 November 1967	21 November 1967	
<i>Government Railways Act Amendment Act 1970</i>	61 of 1970	5 November 1970	5 November 1970	
<i>Government Railways Act Amendment Act 1971</i>	21 of 1971	1 December 1971	1 December 1971	
<i>Government Railways Act Amendment Act 1972</i>	72 of 1972	16 November 1972	16 November 1972	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Metric Conversion Act 1972</i>	94 of 1972	4 December 1972	The relevant amendments effective from 1 July 1973 (see section 2 and <i>Gazette</i> 29 June 1973 p.2496)	As amended by Act No. 19 of 1973, section 4
<i>Government Railways Act Amendment Act 1973</i>	94 of 1973	27 December 1973	22 March 1974 (see section 2 and <i>Gazette</i> 22 March 1974 p.902)	
<i>Government Railways Act Amendment Act (No. 2) 1975</i>	66 of 1975	7 December 1975	7 December 1975	
<i>Government Railways Act Amendment Act 1975</i>	73 of 1975	14 November 1975	14 November 1975	
<i>Government Railways Act Amendment Act 1976</i>	27 of 1976	9 June 1976	1 January 1977 (see section 2 and <i>Gazette</i> 31 December 1976 p.5128)	
<i>Government Railways Act Amendment Act 1977</i>	47 of 1977	18 November 1977	18 November 1977	
<i>Government Railways Act Amendment Act 1978</i>	93 of 1978	17 November 1978	17 November 1978	
<i>Government Railways Act Amendment Act 1979</i>	38 of 1979	25 October 1979	25 October 1979	

Government Railways Act 1904

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Government Railways Amendment Act 1980</i>	77 of 1980	5 December 1980	5 December 1980	
<i>Government Railways Amendment Act 1982</i>	12 of 1982	14 May 1982	14 May 1982	
<i>Acts Amendment and Repeal (Transport Co-ordination) Act 1985, Part IV</i>	54 of 1985	28 October 1985	1 January 1986 (see section 2 and <i>Gazette</i> 20 December 1985 p.4822)	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see section 2 and <i>Gazette</i> 30 June 1986 p.2255)	
<i>Government Railways Amendment Act 1987</i>	16 of 1987	25 June 1987	25 June 1987 (see section 3)	
<i>Acts Amendment (Public Service) Act 1987, section 32</i>	113 of 1987	31 December 1987	16 March 1988 (see section 2 and <i>Gazette</i> 16 March 1988 p.813)	
<i>Government Railways Amendment Act (No. 2) 1990</i>	79 of 1990	17 December 1990	17 December 1990 (see section 2)	Section 7 savings ¹⁵

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Government Railways Amendment Act 1990</i>	87 of 1990	17 December 1990	20 March 1992 (see section 2 and <i>Gazette</i> 20 March 1992 p.1313)	Sections 5(2), 6(2), 7(2) 8(2) and 15: transitional ^{6, 7,} 10, 12, 16
<i>Criminal Law Amendment Act (No. 2) 1992, section 16(1)</i>	51 of 1992	9 December 1992	6 January 1993	
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2(1))	
<i>Acts Amendment (Public Sector Management) Act 1994, section 19</i>	32 of 1994	29 June 1994	1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	
<i>Acts Amendment (Perth Passenger Transport) Act 1994, Part 4</i>	64 of 1994	1 December 1994	1 January 1995 (see section 2 and <i>Gazette</i> 30 December 1994 p.7211)	
<i>Sentencing (Consequential Provisions) Act 1995, Part 38 and section 147</i>	78 of 1995	16 January 1996	4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	

Government Railways Act 1904

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Statutory Corporations (Liability of Directors) Act 1996, section 3</i>	41 of 1996	10 October 1996	1 December 1996 (see section 2 and <i>Gazette</i> 12 November 1996 p.6301)	
<i>Government Railways Amendment Act 1996</i>	47 of 1996	25 October 1996	22 November 1996	
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 October 1996	25 October 1996 (see section 2(1))	
<i>Trustees Amendment Act 1997, section 18</i>	1 of 1997	6 May 1997	16 June 1997 (see section 2 and <i>Gazette</i> 10 June 1997 p.2661)	
<i>Equal Opportunity Amendment Act (No. 3) 1997, section 8</i>	42 of 1997	9 December 1997	6 January 1998 (see section 2(1))	
<i>Rail Safety Act 1998, section 64(2)</i>	32 of 1998	6 July 1998	3 February 1999 (see section 2 and <i>Gazette</i> 2 February 1999 p.351)	Schedule 3, clause 1(7): transitional ¹²
<i>Government Railways Amendment Act 1998</i>	33 of 1998	6 July 1998	6 July 1998 (see section 2)	
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999, section 85</i>	26 of 1999	29 June 1999	1 July 1999 (see section 2(1) and <i>Gazette</i> 30 June 1999 p.2905)	

N.B. The *Government Railways Act 1904* was affected by —
section 96 of the *Public Works Act 1902* (2 Edw. VII. 47);
sections 2 and 6 of the *Justices Act Amendment Act 1932* (No. 26 of 1932);
section 4 of the *Kalgoorlie –Parkeston Railway Act 1959* (No. 36 of 1959);
section 12 of the *Midland Railway Company of Western Australia Limited Acquisition Agreement Act 1963* (No. 47 of 1963);
section 21 of the *State Transport Co-ordination Act 1966* (No. 91 of 1966);
section 7 of the *Railway Discontinuance Act 1996* (No. 46 of 1996);
section 5 of the *Rail Safety Act 1998* (No. 32 of 1998).

^{1a} At the date of this reprint Part 7 of the *Government Railways (Access) Act 1998* (No. 49 of 1998) was not operative. It reads as follows —

“

Part 7 — Amendment of the *Government Railways Act 1904*

43. Consequential amendments to the *Government Railways Act 1904*

- (1) In this section the *Government Railways Act 1904** is referred to as the principal Act.

[* *Reprinted as approved 27 October 1982.*

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, pp. 98-9.]

- (2) Section 13 of the principal Act is amended by repealing subsection (1) and substituting the following subsections —

“

- (1) The Commission shall have the management, maintenance and control of every Government railway.

- (1a) Subsection (1) has effect subject to —

- (a) this Act;
- (b) section 18E of the *Transport Co-ordination Act 1966*;
- (c) the *Government Railways (Access) Act 1998*;
and
- (d) the *Rail Safety Act 1998*.

”

- (3) Section 22 of the principal Act is repealed.

- (4) Section 25 of the principal Act is repealed and the following section is substituted —

“

25. Conditions of carriage of goods

The Commission may determine the conditions of carriage of goods on any rail service operated by it, including limits on its liability for loss of, damage to or delay in the delivery of such goods.

”

- (5) Section 26A of the principal Act is amended by deleting “Notwithstanding the provisions of section twenty-two of this Act, the” and substituting the following —

“ The ”.

- (6) Section 28A(3) of the principal Act is amended by deleting “Notwithstanding sections twenty-two and twenty-five of this Act, the” and substituting the following —

“ The ”.

- (7) Section 61(5) of the principal Act is amended by deleting “other than the *Rail Safety Act 1998*” and inserting the following —

“

, including the *Government Railways (Access) Act 1998*, but is subject to the *Rail Safety Act 1998*

”

- (8) Section 68 of the principal Act is amended by deleting from and including “, subject, however, to the following conditions” to the end of the section and substituting a full stop.

- (9) Section 69 of the principal Act is repealed.

- (10) The Second Schedule to the principal Act is repealed.

”

² Repealed by the *Liquor Licensing Act 1988* (No. 54 of 1988).

³ Repealed by the *Mining Act 1978* (No. 117 of 1978).

⁴ Under section 112(1) of the *Public Sector Management Act 1994*, references to the *Public Service Act 1978* may be construed as references to the *Public Sector Management Act 1994* (No. 31 of 1994).

⁵ Now *Road Traffic Act 1974* (No. 59 of 1974).

⁶ Section 5(2) of the *Government Railways Amendment Act 1990* (No. 87 of 1990) reads as follows —

“

- (2) Any moneys which were, immediately before the commencement of this section, standing to the credit of the Miscellaneous

Revenue Account referred to in section 23(1)(23c) of the principal Act shall be paid into and placed to the credit of the Account within the meaning of the principal Act as amended by this Act.

”

⁷ Section 6(2) of the *Government Railways Amendment Act 1990* (No. 87 of 1990) reads as follows —

“

- (2) Any moneys which were, immediately before the commencement of this section, standing to the credit of The Railway Servants' Benefit Fund referred to in section 24(7) of the principal Act shall be paid into and placed to the credit of the Account within the meaning of the principal Act as amended by this Act.

”

⁸ Repealed by the *Interpretation Act 1984* (No. 12 of 1984).

⁹ Repealed by the *State Transport Co-ordination Act 1981* (No. 14 of 1981) which was repealed by the *Acts Amendment and Repeal Transport Co-ordination Act 1985* (No. 54 of 1985).

¹⁰ Section 7(2) of the *Government Railways Amendment Act 1990* (No. 87 of 1990) reads as follows —

“

- (2) Any moneys which were, immediately before the commencement of this section, standing to the credit of the account for claims and compensation referred to in section 33 of the principal Act shall be paid into and placed to the credit of the Account within the meaning of the principal Act as amended by this Act.

”

¹¹ Section 8(2) of the *Government Railways Amendment Act 1990* (No. 87 of 1990) reads as follows —

“

- (2) Any moneys which were immediately before the commencement of this section standing to the credit of the Western Australian Government Railways Commission Loans Account established under section 54A of the principal Act shall be paid into and placed to the credit of the Account within the meaning of the principal Act as amended by this Act.

”

¹² Clause 1(7) of Schedule 3 to the *Rail Safety Act 1998* (No. 32 of 1998) reads as follows —

“

- (7) Section 66A(3) continues to apply in respect of any certificate given under section 66A(2) before the repeal of those provisions.

”

¹³ In respect of matters arising after 1 January 1991, the operation of the *Companies (Western Australia) Code* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990* (No. 105 of 1990).

¹⁴ Repealed by the *Associations Incorporations Act 1987* (No. 59 of 1987).

¹⁵ Section 7 of the *Government Railways Amendment Act (No.2) 1990* (No. 79 of 1990) reads as follows —

“

7. Operation of former section 76 varied

- (1) The express condition imposed by subsection (1) of section 76 of the principal Act (as in force immediately before the commencement of this Act) upon the appointment or employment of certain persons as officers or servants of the department —

(a) shall, subject to paragraph (b), be taken not to have required such a person to be a member of or contributor to the fund mentioned in that subsection for the period commencing on the transfer date and ending immediately before the commencement of this Act but to have required any such person to be a member of the new fund in accordance with the rules of that fund for that period;

(b) shall not be taken to have required any such person to be a member of or contributor to the fund mentioned in that subsection, or any other fund, on or after the transfer date, if the person was not, immediately before that date, already required by such a condition to be a member of or contributor to the fund mentioned in that subsection,

and, for the purpose of giving effect to paragraph (a), that section shall be construed as if —

- (c) a reference in that section to the fund mentioned in that subsection had been a reference to the new fund;
- (d) a reference in that section to the by-laws relating to the fund mentioned in that subsection had been a reference to the rules of the new fund; and

- (e) a reference in that section to the committee of management of the fund mentioned in that subsection had been a reference to the company.
- (2) In this section, unless the contrary intention appears —
“the transfer date” means 2 February 1990, being the date of the publication in the *Gazette* of the orders made under section 34 of the *Associations Incorporation Act 1987* transferring to the company the undertakings of Western Australian Government Railways Employees’ Endowment Fund Incorporated and Western Australian Government Railways Employees’ Provident Fund Incorporated; and expressions used in section 76 of the principal Act (as substituted by section 6 of this Act) that are used in this section have the same respective meanings as they have in that section.

”

¹⁶ Section 15 of the *Government Railways Amendment Act 1990* (No. 87 of 1990) reads as follows —

“

15. Closure of certain accounts of Trust Fund

Notwithstanding anything in section 15 of the *Financial Administration and Audit Act 1985*, the accounts —

- (a) forming part of the Trust Fund within the meaning of that Act; and
- (b) respectively known as —
- (i) the Railways Accident and Fire Insurance Fund;
 - (ii) the Railways Assets Purchase Fund;
 - (iii) the Railways Provision for Depreciation of Stores; and
 - (iv) the Railways Provision for Long Service Leave and Other Leave,

are hereby closed and the balance of moneys standing to the credit of each of those accounts shall be applied first in payment of any debts outstanding in respect of that account and any balance remaining after any such application shall be paid into and placed to the credit of the Account within the meaning of the principal Act as amended by this Act.

”

¹⁷ Sections 11 and 12 of the *Government Railways Act Amendment Act 1957* (No. 37 of 1957) reads as follows —

“

11. Validation

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, ratified and validated.

12. Saving

- (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.

”

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
appointed day	12(1)
authorized person	53A(1)
Charges	2
Commission	2
Commissioner	2
Department	2
Director General	2
document	8D(4)
free pass	47
function	12(1)
Goods	2
Government department	92(1)
Government railway	2
information	8D(4)
Liquor	2
Minister	2
net profit	54EA(2)(a)
Notice	2
parliamentary purposes	8D(4)
permanently employed	77
Prescribed	2
Public Notice	2
Publicly notified	2
Railway	2
railway document	93A(3)
Road	2
service	28A(1)
stock ledgers	54F(13)
Subiaco redevelopment area	63A(5)
the Account	2
the body	8A(1)(b)
the company	76(4)
the former funds	76(4)
the industrial union	78(3)
the new fund	76(4)
the trust deed	76(4)