

Western Australia

Government Railways Act 1904

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Government Railways Act 1904

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Notes

Western Australia

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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 —

“**Authority**” means the Public Transport Authority of Western Australia established by the *Public Transport Authority Act 2003* section 5;

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

“**chief executive officer**” means the chief executive officer of the Authority;

“**Department**” means the department of the Public Service principally assisting the Minister in the administration of this Act;

“**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;

“**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” 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 under section 66A is not a government railway for the purposes of this Act;

“road” includes street, right-of-way, and thoroughfare.

[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; No. 7 of 2002 s. 62(2); No. 31 of 2003 s. 97.]

2AA. Certain land continues to be part of government railway

- (1) If, for the purpose of facilitating the Authority’s involvement in, or the business of, a business concern, the Authority disposes of a leasehold interest in any railway land to the business concern, the disposal by the Authority of that interest does not prevent the land from continuing to be part of a government railway.

s. 2A

(2) In this section —

“business concern” means a company, a partnership, a trust, a joint venture, or any other business arrangement, in which the Authority is involved for all or any of the purposes of —

- (a) acquiring or taking over any property, rights, and liabilities of the Authority; or
- (b) carrying out, controlling, or managing any undertaking, works, or business;

“railway land” means land that is part of a government railway.

[Section 2AA inserted by No. 31 of 2003 s. 98.]

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. Property in things on railway land

Anything that is on Crown land that is part of a government railway —

- (a) is not a part of the land, regardless of whether it is of the nature of a fixture;
- (b) is capable of being assigned separately from the land; and
- (c) is capable of being removed from the land by, or with the authority of, the owner of that thing.

[Section 3 inserted by No. 31 of 2003 s. 99.]

4. Effect on Crown land when railway construction authorised

If all or part of a government railway is authorised to be constructed on Crown land, the land is to be regarded as if it had, at that time —

- (a) been reserved under the *Land Administration Act 1997* section 41 for the purposes of performing the Authority's functions under the *Public Transport Authority Act 2003* or this Act; and
- (b) under the *Land Administration Act 1997* section 46, been placed under the care, control, and management of the Authority for those purposes.

[Section 4 inserted by No. 31 of 2003 s. 100.]

[5. Repealed by No. 31 of 2003 s. 101.]

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

7. Certificate of chief executive officer evidence of certain facts

A certificate under the hand of the chief executive officer 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.

[Section 7 amended by No. 31 of 2003 s. 102.]

[Part II (s. 8-12) repealed by No. 31 of 2003 s. 103.]

**Part III — The direction, management, maintenance
and control of the Western Australian government
railways**

13. Authority to manage railways

- (1) The Authority shall have the management, maintenance and control of every government railway.
- (1a) Subsection (1) has effect subject to —
 - (a) this Act;
 - [(b) deleted]*
 - (c) the *Railways (Access) Act 1998*;
 - (ca) the *Rail Freight System Act 2000*; and
 - (d) the *Rail Safety Act 1998*.
- (2) For the purposes of the construction, operation, alteration, improvement, management, maintenance, or control of any railway subject to this Act, the Authority 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); No. 49 of 1998 s. 43(2); No. 13 of 2000 s. 91; No. 31 of 2003 s. 104 and 139(1).]

14. Authority may join any body formed for the improvement of railways

- (1) Subject to this Act and to the prior approval of the Minister, the Authority may —
 - (a) become a member of or shareholder in; and

- (b) contribute funds to,
any body whether incorporated or not (the “**body**”) that —
 - (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 chief executive officer or any other officer of the Authority authorised in writing by the chief executive officer may represent the Authority or hold office on the body but any authorisation given under this subsection is revocable by the chief executive officer.
- (3) Within any constraints that the Minister may impose, the Authority 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 14 inserted by No. 31 of 2003 s. 105.]

15. Power to protect railway

Without in any way limiting the powers conferred by the *Public Works Act 1902*, the Authority 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; No. 31 of 2003 s. 139(1).]

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[16. Repealed by No. 31 of 2003 s. 106.]

[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 Authority 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 Authority, 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 Authority 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 Authority 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 Authority.
- (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 Authority 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 Authority; 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; No. 31 of 2003 s. 139(1).]

[19. Repealed by No. 31 of 2003 s. 107.]

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

[21. Repealed by No. 31 of 2003 s. 108.]

[22. Repealed by No. 49 of 1998 s. 43(3).]

23. By-laws

- (1) The Authority 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;

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- (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 Authority 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) deleted]*
- (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) deleted]*

- (16) regulating the maintenance, usage, opening, and closing of all gates and slip-panels, cattle-stops, and fences;
- (17) regulating the manner, times, and places in and at which tickets of any kind shall be purchased by, issued to, used by, and delivered up by passengers;
- (18) facilitating and regulating the insurance of persons travelling on the lines of railway, by any accident insurance company now or hereafter to be formed;
- (19) regulating the mode in which, and the times within which claims for loss, non-delivery of, or damage to goods, including passengers' luggage, or in respect of any other cause of action relating to either goods including passengers' luggage or passengers, shall be made;
- (20) regulating the terms on which private sidings may be constructed and used, the rent thereof, and the manner in which the same may be worked;
- (21) regulating the hire, use, and detention of any locomotives or rolling-stock at such sidings, and the liability of persons hiring, using, or detaining the same for damage done thereto, or for the destruction or detention thereof;
- (22) providing for the grant of licences to porters and to the drivers of vehicles plying for hire within the precincts of any railway; prescribing the conditions of such licences (including the payment in each instance of a licence fee), and also of the transfer or forfeiture thereof; making similar provision for the licensing of vehicles plying for hire as aforesaid (including the payment in each instance of a licence fee), and the conditions subject to which such licences shall be held and may be transferred or forfeited; and providing also for the exclusion of any such licensed driver or vehicle from railway premises until there is room for his vehicle, and

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- 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 belongs to or is under the care, control, and management of the Authority, to be set aside as vehicle parking or standing areas for use by —
- (a) officers and servants of the Department or Authority;
 - (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 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 Authority 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 authorising the Authority 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

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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 Authority 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 Authority; and
 - (k) prescribing a modified penalty or modified penalties payable to the Authority 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 authorising persons appointed by the Authority to remove into custody any vehicle left on a railway for a period in excess of 7 days, for authorising persons appointed by the Authority 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 2 months the Authority may sell or otherwise dispose of the vehicle, for providing that the proceeds of the sale of such a vehicle may be applied towards recouping the costs of removal, custody and sale of the vehicle, for providing that the costs of the removal, custody and disposal of such a vehicle (less the proceeds of its sale, if any) may be recovered from the owner of the vehicle in a court of competent jurisdiction, and for providing that where the proceeds of the sale of such vehicle exceed the costs of its removal, custody and sale the amount of the excess shall be paid to the owner of the vehicle, or where the identity or whereabouts of the owner is unknown, credited to the account referred to in the *Public Transport Authority Act 2003* section 32;

- (24) regulating the use of refreshment rooms and restaurant cars under the management and control of the Authority;
- (25) regulating the sale, supply, and consumption of liquor on trains or other property under the management or control of the Authority 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 Relations 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

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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 authorise 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) 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 Authority's intention to sell the vehicle and where the owner cannot be so notified notice of the Authority'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 s. 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. 5; No. 64 of 1994 s. 32; No. 49 of 1996 s. 64; No. 31 of 2003 s. 109 and 139.]

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 Authority 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

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subject thereto shall be credited to the account referred to in the *Public Transport Authority Act 2003* section 32.

- (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. 6; No. 49 of 1996 s. 64; No. 31 of 2003 s. 110 and 139(1).]

25. Conditions of carriage of goods

The Authority 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.

[Section 25 inserted by No. 49 of 1998 s. 43(4); amended by No. 31 of 2003 s. 139(1).]

26. Special agreements

The Authority 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 Authority 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; No. 31 of 2003 s. 139(1).]

26A. Special contracts

The Authority 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; amended by No. 49 of 1998 s. 43(5); No. 31 of 2003 s. 139(1).]

27. Goods left at owner's risk

Nothing herein contained shall operate or be construed to subject the Authority 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; No. 31 of 2003 s. 139(1).]

[28, 28A, 29. Repealed by No. 31 of 2003 s. 111.]

30. Lien

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

[Section 30 amended by No. 78 of 1948 s. 6; No. 31 of 2003 s. 139(1).]

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 Authority 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.

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[Section 31 amended by No. 78 of 1948 s. 6; No. 31 of 2003 s. 139(1).]

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 Authority 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 Authority may direct the sale thereof forthwith without notice, and if such goods cause offence or create a nuisance may cause them to be destroyed at the expense of the owner.

[Section 32 amended by No. 78 of 1948 s. 6; No. 31 of 2003 s. 139(1).]

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 referred to in the *Public Transport Authority Act 2003* section 32.

[Section 33 amended by No. 87 of 1990 s. 7; No. 49 of 1996 s. 64; No. 31 of 2003 s. 112.]

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 authorised to receive such goods, and without distinctly marking the contents on the outside of such package, that person shall be liable to a penalty not exceeding \$200.

- (2) The Authority 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 s. 6 and 16; No. 55 of 1960 s. 7; No. 113 of 1965 s. 8; No. 51 of 1992 s. 16(1); No. 31 of 2003 s. 139(1); No. 50 of 2003 s. 68(2).]

35. Actions by the Authority

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 Authority in any court of competent jurisdiction.

[Section 35 amended by No. 78 of 1948 s. 6; No. 31 of 2003 s. 139(1).]

36. Actions against the Authority

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 Authority, and not otherwise; and, subject to the limitations and provisions of this Act, the

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Authority may be sued in respect thereof in any court of competent jurisdiction.

[Section 36 amended by No. 78 of 1948 s. 6; No. 31 of 2003 s. 139(1).]

37. Authority deemed to be common carrier

[(1) and (2) repealed]

- (3) The Authority 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 s. 6 and 17; No. 73 of 1954 s. 5 and 8; No. 77 of 1980 s. 6; No. 31 of 2003 s. 113.]

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

No action shall lie or be brought or continued against the Authority 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 Authority, at all such reasonable times as the Authority may require.

[Section 38 amended by No. 78 of 1948 s. 6; No. 31 of 2003 s. 139(1).]

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

40. No liability in certain cases

The Authority 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; No. 31 of 2003 s. 139(1).]

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

43. Offences on railways punishable by fine

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 authorised 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.

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[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 travelling on a service provided by the Authority 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 Authority, 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; No. 31 of 2003 s. 114 and 139(1).]

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 for travel on a service provided by the Authority (an “**Authority ticket**”), or any portion of an Authority ticket, not being a person authorised or employed by the Authority to sell the ticket, or purchases or offers to purchase an Authority ticket or any portion of an Authority ticket from a person not authorised or employed by the Authority to sell the ticket;
- (5) is brought before a court of summary jurisdiction 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 the court how he came by the same,

he shall, in respect of each offence, be liable 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); No. 31 of 2003 s. 115; No. 50 of 2003 s. 68(3); No. 59 of 2004 s. 141.]

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

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- (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 authorised to proceed such additional distance without paying such additional fare; or
- [(4) deleted]*
- (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 authorised 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; No. 31 of 2003 s. 116.]

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 authorised by the Authority;
- (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; No. 31 of 2003 s. 139(1).]

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 Authority, without warrant or other authority, to arrest and detain the person so offending, and to deal with him according to law.

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[Section 49 amended by No. 78 of 1948 s. 18; No. 31 of 2003 s. 139(1); No. 59 of 2004 s. 141.]

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 Authority 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; No. 31 of 2003 s. 139(1).]

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 such person so offending, or any person counselling, aiding, or assisting in such offence, and convey him before a police officer, 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 a penalty not exceeding \$200.

[Section 51 amended by No. 55 of 1960 s. 13; No. 51 of 1992 s. 16(1); No. 50 of 2003 s. 68(3); No. 59 of 2004 s. 141.]

[52. *Repealed by No. 31 of 2003 s. 117.*]

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 authorised generally or particularly for that purpose by the Authority.

[Section 53 amended by No. 78 of 1948 s. 6; No. 14 of 1996 s. 4; No. 31 of 2003 s. 139(1).]

53A. Infringement notices

- (1) A reference in subsection (2), (3), (5) or (7) to an “**authorised person**” is a reference to a person appointed under subsection (11) to be an authorised person for the purposes of the subsection in which the term is used.
- (2) An authorised 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 be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorised person within a period of 28 days after the giving of the notice; and

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- (c) inform the alleged offender as to who are authorised persons for the purposes of receiving payment of modified penalties.
- (4) In an infringement notice under this section the amount specified as being the modified penalty for the offence referred to in the notice shall be the amount that was the prescribed modified penalty under section 23(1)(28a) at the time the alleged offence is believed to have been committed.
- (5) An authorised 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 authorised 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.

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- (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 Authority may, in writing, appoint persons or classes of persons to be authorised 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 authorised to give infringement notices under subsection (2) is not eligible to be an authorised person for the purposes of any of the other subsections.
- (12) The Authority shall issue to each person who is authorised to give infringement notices under this section a certificate stating that the person is so authorised, and the authorised 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; No. 31 of 2003 s. 139(1); No. 84 of 2004 s. 80.]

[Part IV: s. 54A repealed by No. 87 of 1990 s. 8(1); s. 56-58 repealed by No. 98 of 1985 s. 3; s. 60 repealed by No. 87 of 1990 s. 14; balance (s. 54, 54AA, 54B-54E, 54EA, 54F-54H, 54J-54M, 55 and 59) repealed by No. 31 of 2003 s. 118.]

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) Under this section the Authority 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 other than a public passenger transport 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 Authority 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 Authority may, with the approval of the Minister, exercise any of its powers under the *Public Transport Authority Act 2003* or this Act in relation to property.
- (5) This section applies despite anything else in this Act or any other enactment, including the *Railways (Access) Act 1998*, but is subject to the *Rail Safety Act 1998*.

[Section 61 inserted by No. 47 of 1996 s. 2; amended by No. 32 of 1998 s. 64(2); No. 49 of 1998 s. 43(7); No. 13 of 2000 s. 93; No. 31 of 2003 s. 119 and 139(1).]

[62, 63. Repealed by No. 31 of 2003 s. 120.]

63A. Lease of certain railway land

- (1) The Authority 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 Authority 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 Authority 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; amended by No. 31 of 2003 s. 139(1).]

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

- (1) The Authority may, with the approval of the Governor, let on lease any railway land, and any buildings, workshops or other

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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 Authority 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; amended by No. 31 of 2003 s. 139(1).]

64. Other powers not excluded

The Authority's powers under this Part are in addition to its powers under the *Public Transport Authority Act 2003* sections 13 to 17.

[Section 64 inserted by No. 31 of 2003 s. 121.]

[65, 66. Repealed by No. 31 of 2003 s. 122.]

66A. Tourist railways

- (1) If a railway or portion of a railway that is on Crown land is no longer required for use by the Authority, the Authority may request the Minister for Lands to make orders in respect of the land in accordance with subsection (2).
- (2) If requested under subsection (1) by the Authority to do so, the Minister for Lands is required to —
 - (a) under the *Land Administration Act 1997* section 50, order that any management order placing the land under

- the care, control, and management of the Authority is revoked;
- (b) make an order under the *Land Administration Act 1997* section 51 changing the purpose for which the land is reserved to the purposes of operating a tourist railway; and
 - (c) under the *Land Administration Act 1997* section 46, place the land under the care, control, and management of a person specified by the Authority in its request as the operator of the tourist railway.
- (3) Land in respect of which an order is made as required by subsection (2)(a) is not a government railway for the purposes of this Act.
- (4) If an order by which land is placed under the care, control, and management of a person for the purposes of operating a tourist railway is revoked and the land is again required for use by the Authority in connection with a government railway, the land again becomes a part of a government railway for the purposes of this Act and the Authority may request the Minister for Lands to make orders in respect of the land in accordance with subsection (5).
- (5) If requested under subsection (4) by the Authority to do so, the Minister for Lands is required to —
- (a) make —
 - (i) an order under the *Land Administration Act 1997* section 51 changing the purpose for which the land is reserved to the purposes described in section 4(a); or
 - (ii) if the reserve has been cancelled, make an order under the *Land Administration Act 1997* section 41 reserving the land for the purposes described in section 4(a);
- and

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- (b) make an order under the *Land Administration Act 1997* section 46, placing the land under the care, control, and management of the Authority for the purposes described in section 4(a).

- (6) In this section —

“**Minister for Lands**” means the body corporate of that name referred to in the *Land Administration Act 1997* section 7(1).

[Section 66A inserted by No. 31 of 2003 s. 123.]

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

[67. Repealed by No. 31 of 2003 s. 124.]

Part VI — Sidings

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

The Authority 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.

[Section 68 amended by No. 78 of 1948 s. 6; No. 12 of 1982 s. 4; No. 32 of 1998 s. 64(2); No. 49 of 1998 s. 43(8); No. 31 of 2003 s. 139(1).]

[69. Repealed by No. 49 of 1998 s. 43(9).]

Part VII — Miscellaneous provisions

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

[71. Repealed by No. 31 of 2003 s. 125.]

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 Authority and the owner of such railway or tramway; and the Authority 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 Authority 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; No. 31 of 2003 s. 139(1).]

73. Authority may appoint and dismiss certain officers

- (1) The Authority may suspend, dismiss, fine, transfer without payment of transfer expenses, or reduce to a lower class or grade, any specified award employee, and the Minister cannot give any direction as to the exercise of those powers except in the cases of such offices and services as are prescribed.
- (2) The Authority may —
 - (a) in any case where a specified award employee 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 employee, notwithstanding and in addition to such suspension; and
- (b) in any case where the Authority considers the circumstances warrant, by way of punishment for an act or omission reduce a specified award employee to a lower class or grade and also transfer him without payment of transfer expenses,

but except as provided in this subsection the Authority shall not inflict on any specified award employee more than one form of punishment for the same offence:

Except that, if the act or omission involved the employee's driving of a motor vehicle and the employee was punished for it under the *Road Traffic Act 1974*, the Authority may inflict on that employee the punishment referred to in paragraph (a)(iii), or either or both of the punishments referred to in paragraph (a)(ii) and (iv), but not the punishment referred to in paragraph (a)(i).

- (3) Notwithstanding anything in this section, to the extent that there is in the case of a specified award employee who is a member of the Senior Executive Service within the meaning of the *Public Sector Management Act 1994* an inconsistency between this Act and that Act that Act shall prevail.

- (4) In this section —

“specified award employee” means a person who was employed under this section immediately before it was amended by the *Public Transport Authority Act 2003* section 126 and, when that amendment took effect, became an employee of the Authority but only if the person's employment was, before the amendment took effect, and continues to be, covered by —

- (a) the *Government Railways Locomotive Enginemen's Award 1973-1990 No. 13 of 1990*; or

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(b) the *Railway Employees Award No. 18 of 1969*.

[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; No. 31 of 2003 s. 126 and 139(1).]

74. Railway police

- (1) The Authority 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.
- (1a) The power that subsection (1) gives a special constable to take a person into custody includes the power to take the person in custody to a police station or other place for the person to be dealt with according to law.
- (2) No matter or thing done or omitted by the Authority 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 Authority 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; No. 31 of 2003 s. 127 and 139(1).]

[75. Repealed by No. 31 of 2003 s. 128.]

76. Endowment and provident fund

- (1) The Authority may —
 - (a) hold shares in the company; and

- (b) at the request of the company —
 - (i) provide the company with the services of staff of the Authority at such cost as the Authority determines; and
 - (ii) do anything else that it considers necessary or expedient to assist in the administration of the company.
- (2) In this section —
 “the company” means West Super Plus Pty Ltd (ACN 009 436 408).

[Section 76 inserted by No. 31 of 2003 s. 129.]

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 the Magistrates Court.

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No person shall be deemed “**permanently employed**” within the meaning of this section unless he has been continuously employed for 6 months.

[Section 77 amended by No. 78 of 1948 s. 6 and 25; No. 61 of 1955 s. 5; No. 38 of 1958 s. 3; No. 31 of 2003 s. 130; No. 59 of 2004 s. 141.]

78. Constitution of Appeal Board

- (1) An Appeal Board shall consist of the following persons, that is to say —
 - (a) A magistrate to be appointed from time to time by the Governor, and to be the chairman of the Appeal Board, or a person appointed in like manner to act as his deputy;
 - (b) One person to be appointed from time to time by the Authority, 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 Authority 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 s. 6 and 26; No. 13 of 1954 s. 2; No. 8 of 1959 s. 2; No. 27 of 1976 s. 3; No. 31 of 2003 s. 139(1); No. 59 of 2004 s. 141.]

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

80. Notice of appeal

Notice of every appeal to the Appeal Board shall be lodged with the Authority 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 Authority 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 section 78(1)(c)(ii) 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.

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[Section 80 amended by No. 56 of 1926 s. 5; No. 27 of 1976 s. 5; No. 77 of 1980 s. 12; No. 31 of 2003 s. 139(1).]

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 s. 8(2) and 10.]

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 Authority nominated by the appellant;
 - and
 - (b) as to the Authority, by one of its employees authorised 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; No. 31 of 2003 s. 139(1).]

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

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every case costs shall be awarded against an appellant whose appeal is considered frivolous.

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

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

[Section 83 amended by No. 78 of 1948 s. 6; No. 31 of 2003 s. 139(1).]

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 the Magistrates Court; prescribing the procedure and conduct of such appeals, including the taking of evidence at a distance and the power and authority of the court when 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; No. 59 of 2004 s. 141.]

[85-87. Repealed by No. 31 of 2003 s. 131.]

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 in which the Authority has given a leasehold interest (except when it is leased to Co-operative Bulk Handling Limited) 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; No. 31 of 2003 s. 132.]

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

[90. Repealed by No. 31 of 2003 s. 133.]

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

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- (4) Without prejudice to the power of direction and control of the Authority conferred upon the Minister, any question, difference, or dispute arising or about to arise between the Minister or the Authority 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; amended by No. 31 of 2003 s. 139(1).]

[93, 93A. Repealed by No. 31 of 2003 s. 134.]

94. Prosecutions

Proceedings for an offence against this Act may be instituted by a member of the Police Force or on behalf of the Authority by an employee of the Authority authorised in writing by it to institute the proceedings on its behalf.

[Section 94 inserted by No. 31 of 2003 s. 135.]

95. Representation of Authority in proceedings

In summary proceedings an employee of the Authority nominated by the Authority in writing for that purpose may, whether or not a legal practitioner, represent the Authority in all respects as though the employee were the party concerned.

[Section 95 inserted by No. 31 of 2003 s. 136.]

96. Proof of certain matters not required

- (1) In any prosecution or other legal proceedings under this Act, the by-laws, or the regulations instituted by or on behalf of the Authority, no proof is required (unless evidence is given to the contrary) of —
- (a) a person's authorisation to institute the proceedings on behalf of the Authority;

- (b) a person's nomination to represent the Authority in the proceedings; or
- (c) the appointment of the chief executive officer of, or any employee of, the Authority.

(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 chief executive officer, or an employee authorised in that behalf, of the Authority,

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) belongs to, or is under the care, control, and management of, the Authority;
- (e) is in the possession, custody or control of the Authority,

shall be deemed to be proof in the absence of 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; No. 31 of 2003 s. 137 and 139(1).]

[97. Repealed by No. 31 of 2003 s. 138.]

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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 repealed by No. 49 of 1998 s. 43(10).]

Notes

- ¹ This reprint is a compilation as at 2 September 2005 of the *Government Railways Act 1904* and includes the amendments made by the other written laws referred to in the following table³. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Government Railways Act 1904</i>	23 of 1904	16 Jan 1904	16 Jan 1904
<i>Government Railways Amendment Act 1907</i>	29 of 1907	20 Dec 1907	Act other than s. 8-11: 20 Dec 1907; s. 8-11: 16 Oct 1908 (see s. 8(2) and <i>Gazette</i> 9 Oct 1908 p. 2705)
<i>Government Railways Act Amendment Act 1926</i>	56 of 1926	24 Dec 1926	24 Dec 1926
<i>Government Railways Act Amendment Act 1933</i>	36 of 1933	4 Jan 1934	12 Feb 1934 (see s. 2 and <i>Gazette</i> 9 Feb 1934 p. 143)
<i>Government Railways Act Amendment Act 1939</i>	15 of 1939	22 Nov 1939	22 Nov 1939
<i>Government Railways Act Amendment Act 1947</i>	72 of 1947	10 Jan 1948	10 Jan 1948
<i>Government Railways Act Amendment Act 1948</i>	78 of 1948	25 Jan 1949	1 Jul 1949 (see s. 2 and <i>Gazette</i> 1 Jul 1949 p. 1410)
Reprint of the <i>Government Railways Act 1904</i> approved 21 Feb 1949 (not in a Volume) (includes amendments listed above except those in the <i>Government Railways Act Amendment Act 1948</i>)			
<i>Government Railways Act Amendment Act 1951</i>	32 of 1951	19 Dec 1951	19 Dec 1951
Reprint of the <i>Government Railways Act 1904</i> approved 26 Oct 1953 in Volume 7 of Reprinted Acts (includes amendments listed above)			
<i>Government Railways Act Amendment Act 1953</i>	86 of 1953	18 Jan 1954	18 Jan 1954
<i>Government Railways Act Amendment Act 1954</i>	13 of 1954	14 Sep 1954	14 Sep 1954

Government Railways Act 1904

Short title	Number and year	Assent	Commencement
<i>Limitation Act 1935</i> s. 48A(1)	35 of 1935 (as amended by No. 73 of 1954 s. 8)	14 Jan 1955	Relevant amendments (see Second Sch. ⁴) took effect on 1 Mar 1955 (see No. 73 of 1954 s. 2 and <i>Gazette</i> 18 Feb 1955 p. 343)
<i>Government Railways Act Amendment Act 1955</i>	61 of 1955	13 Dec 1955	13 Dec 1955
<i>Government Railways Act Amendment Act 1957</i> ⁵	37 of 1957	18 Nov 1957	18 Nov 1957
<i>Government Railways Act Amendment Act 1958</i>	17 of 1958	6 Oct 1958	23 Oct 1959 (see s. 2 and <i>Gazette</i> 23 Oct 1959 p. 2620)
<i>Government Railways Act Amendment Act</i> (No. 2) 1958	38 of 1958	11 Dec 1958	24 Dec 1958 (see s. 2 and <i>Gazette</i> 24 Dec 1958 p. 3372)
<i>Government Railways Act Amendment Act 1959</i>	8 of 1959	8 Sep 1959	8 Sep 1959
<i>Government Railways Act Amendment Act 1960</i>	55 of 1960	2 Dec 1960	2 Dec 1960
Reprint of the <i>Government Railways Act 1904</i> approved 17 May 1963 in Volume 17 of Reprinted Acts (includes amendments listed above)			
<i>Government Railways Act Amendment Act 1963</i>	27 of 1963	13 Nov 1963	13 Nov 1963
<i>Government Railways Act Amendment Act 1965</i>	54 of 1965	9 Nov 1965	9 Nov 1965
<i>Government Railways Act Amendment Act 1967</i>	44 of 1967	21 Nov 1967	21 Nov 1967
<i>Government Railways Act Amendment Act 1970</i>	61 of 1970	5 Nov 1970	5 Nov 1970
<i>Government Railways Act Amendment Act 1971</i>	21 of 1971	1 Dec 1971	1 Dec 1971
<i>Government Railways Act Amendment Act 1972</i>	72 of 1972	16 Nov 1972	16 Nov 1972
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 19 of 1973 s. 4)	4 Dec 1972	Relevant amendments (see Second Sch. ⁶) took effect on 1 Jul 1973 (see s. 2 and <i>Gazette</i> 29 Jun 1973 p. 2496)
Reprint of the <i>Government Railways Act 1904</i> approved 12 Jun 1973 (includes amendments listed above except those in the <i>Metric Conversion Act 1972</i>)			

Short title	Number and year	Assent	Commencement
<i>Government Railways Act Amendment Act 1973</i>	94 of 1973	27 Dec 1973	22 Mar 1974 (see s. 2 and <i>Gazette</i> 22 Mar 1974 p. 902)
<i>Government Railways Act Amendment Act 1975</i>	73 of 1975	14 Nov 1975	14 Nov 1975
<i>Government Railways Act Amendment Act (No. 2) 1975</i>	66 of 1975	7 Dec 1975	7 Dec 1975
<i>Government Railways Act Amendment Act 1976</i>	27 of 1976	9 Jun 1976	1 Jan 1977 (see s. 2 and <i>Gazette</i> 31 Dec 1976 p. 5128)
<i>Government Railways Act Amendment Act 1977</i>	47 of 1977	18 Nov 1977	18 Nov 1977
<i>Government Railways Act Amendment Act 1978</i>	93 of 1978	17 Nov 1978	17 Nov 1978
<i>Government Railways Act Amendment Act 1979</i>	38 of 1979	25 Oct 1979	25 Oct 1979
<i>Government Railways Amendment Act 1980</i>	77 of 1980	5 Dec 1980	5 Dec 1980
<i>Government Railways Amendment Act 1982</i>	12 of 1982	14 May 1982	14 May 1982
Reprint of the Government Railways Act 1904 approved 27 Oct 1982 (includes amendments listed above)			
<i>Acts Amendment and Repeal (Transport Co-ordination) Act 1985 Pt. IV</i>	54 of 1985	28 Oct 1985	1 Jan 1986 (see s. 2 and <i>Gazette</i> 20 Dec 1985 p. 4822)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Government Railways Amendment Act 1987</i>	16 of 1987	25 Jun 1987	25 Jun 1987 (see s. 3)
<i>Acts Amendment (Public Service) Act 1987 s. 32</i>	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Government Railways Amendment Act (No. 2) 1990</i> ⁷	79 of 1990	17 Dec 1990	17 Dec 1990 (see s. 2)
<i>Government Railways Amendment Act 1990</i> ⁸	87 of 1990	17 Dec 1990	20 Mar 1992 (see s. 2 and <i>Gazette</i> 20 Mar 1992 p. 1313)

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Short title	Number and year	Assent	Commencement
<i>Criminal Law Amendment Act (No. 2) 1992 s. 16(1)</i>	51 of 1992	9 Dec 1992	6 Jan 1993
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Acts Amendment (Perth Passenger Transport) Act 1994 Pt. 4</i>	64 of 1994	1 Dec 1994	1 Jan 1995 (see s. 2 and <i>Gazette</i> 30 Dec 1994 p. 7211)
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 38 and s. 147</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Statutory Corporations (Liability of Directors) Act 1996 s. 3</i>	41 of 1996	10 Oct 1996	1 Dec 1996 (see s. 2 and <i>Gazette</i> 12 Nov 1996 p. 6301)
<i>Government Railways Amendment Act 1996</i>	47 of 1996	25 Oct 1996	22 Nov 1996
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Trustees Amendment Act 1997 s. 18</i>	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
<i>Equal Opportunity Amendment Act (No. 3) 1997 s. 8</i>	42 of 1997	9 Dec 1997	6 Jan 1998 (see s. 2(1))
<i>Rail Safety Act 1998 s. 64(2)</i> ⁹	32 of 1998	6 Jul 1998	3 Feb 1999 (see s. 2 and <i>Gazette</i> 2 Feb 1999 p. 351)
<i>Government Railways Amendment Act 1998</i>	33 of 1998	6 Jul 1998	6 Jul 1998 (see s. 2)
<i>Government Railways (Access) Act 1998 Pt. 7</i> ¹⁰	49 of 1998	30 Nov 1998	1 Sep 2001 (see s. 2(2) and <i>Gazette</i> 28 Aug 2001 p. 4795)
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999 s. 85</i>	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)

Short title	Number and year	Assent	Commencement
Reprint of the <i>Government Railways Act 1904</i> as at 10 Dec 1999 (includes amendments listed above except those in the <i>Government Railways (Access) Act 1998</i>)			
<i>Rail Freight System Act 2000</i> Pt. 5 Div. 2	13 of 2000	8 Jun 2000	Pt. 5 Div. 2 other than s. 91(1)(a) and (b) and 93: 30 Jun 2000 (see s. 2 and <i>Gazette</i> 30 Jun 2000 p. 3397); s. 91(1)(a) and (b) and 93: 1 Sep 2001 (see s. 2(5)-(7) and <i>Gazette</i> 28 Aug 2001 p. 4795)
Reprint of the <i>Government Railways Act 1904</i> as at 7 Sep 2001 (includes amendments listed above)			
<i>Machinery of Government (Planning and Infrastructure) Amendment Act 2002</i> s. 62	7 of 2002	19 Jun 2002	1 Jul 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037)
<i>Public Transport Authority Act 2003</i> s. 97-139 ¹¹	31 of 2003	26 May 2003	1 Jul 2003 (s. 2(1) and <i>Gazette</i> 27 Jun 2003 p. 2384)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 68	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 8: The <i>Government Railways Act 1904</i> as at 2 Sep 2005 (includes amendments listed above)			

² Repealed by the *Liquor Licensing Act 1988*.

³ The amendment in the *Statutes (Repeals and Minor Amendments) Act 2003* s. 62 is not included because the subsection it sought to amend had been replaced by the *Public Transport Authority Act 2003* s. 137(1) before the amendment purported to come into operation.

⁴ The Second Schedule was inserted by the *Limitation Act Amendment Act 1954* s. 8.

⁵ The *Government Railways Act Amendment Act 1957* s. 11 and 12 are validation and savings provisions that are of no further effect.

⁶ The Second Schedule was inserted by the *Metric Conversion Act Amendment Act 1973* s. 4.

⁷ The *Government Railways Amendment Act (No. 2) 1990* s. 7 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.

”.

⁸ The *Government Railways Amendment Act 1990* s. 15 is a transitional provision
that is of no further effect.

⁹ The *Rail Safety Act 1998* Sch. 3 cl. 1(7) 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.

”.

¹⁰ Now known as the *Railways (Access) Act 1998*.

¹¹ The *Public Transport Authority Act 2003* Pt. 7 Div. 2, 5 and 6 reads as follows:

“

Part 7 — Transitional matters

Division 2 — Transition from former *Government Railways Act 1904* bodies to Authority

79. Terms used in this Division

In this Division, unless the contrary intention appears —

“**asset**” means property of any kind belonging, immediately
before the commencement time, to a former body, whether
tangible, intangible, real, or personal and, without limiting
that meaning, includes —

- (a) any chose in action or goodwill; or
- (b) any right, interest, or claim of any kind,

whether arising from, accruing under, created or evidenced
by or the subject of, an instrument or otherwise and whether
liquidated or unliquidated, actual, contingent or prospective;

“**commencement time**” means the time when this Division comes
into operation;

“**former body**” means the Minister for Western Australian
Government Railways or The Western Australian
Government Railways Commission;

“**liability**” means any liability, duty or obligation that,
immediately before the commencement time, a former body
had —

- (a) whether actual, contingent or prospective, liquidated or unliquidated; or
- (b) whether owed alone or jointly or jointly and severally with any other person;

“Minister for Western Australian Government Railways”

means the former body corporate named Minister for Western Australian Government Railways established under the *Government Railways Act 1904* section 4;

“right” means any right, power, privilege or immunity that, immediately before the commencement time, a former body had whether actual, contingent or prospective;

“The Western Australian Government Railways Commission”

means the former body corporate named The Western Australian Government Railways Commission constituted under the *Government Railways Act 1904* section 8.

80. Authority is successor of former bodies

At the commencement time, the body corporate under the name “Minister for Western Australian Government Railways” and the body corporate under the name “The Western Australian Government Railways Commission” are each succeeded by the Authority.

81. Transitional provisions

- (1) At the commencement time —
 - (a) every asset is, by operation of this section, assigned to the Authority;
 - (b) every liability is, by operation of this section, assigned to and becomes a liability of the Authority; and
 - (c) the Authority is, by operation of this section, substituted for a former body as a party to any proceedings.
- (2) Any agreement or instrument has effect, by operation of this section, as if a reference to the Authority were, at the commencement time, substituted for a reference to the former body in the agreement or instrument, unless in the context it would be inappropriate to make the substitution.
- (3) Any proceedings or remedy that might have been commenced by, or available against or to, a former body in relation to an asset or liability assigned by subsection (1) may be commenced by, or are available against or to, the Authority.
- (4) Anything relating to an asset or liability assigned by subsection (1) that was done or omitted to be done by, to, or in respect of, a former body before the assignment and is of any effect is to be

taken to have been done or omitted by, to, or in respect of, the Authority.

- (5) Crown land that, immediately before the commencement time, was vested in the Minister for Western Australian Government Railways by the *Government Railways Act 1904* section 4(1) is to be regarded as if it had, at that time —
 - (a) been reserved under the *Land Administration Act 1997* section 41 for the purposes of performing the Authority's functions under this Act or the *Government Railways Act 1904*; and
 - (b) under the *Land Administration Act 1997* section 46, been placed under the care, control, and management of the Authority for those purposes.
- (6) Government railways, other than Crown land, that, immediately before the commencement time, were vested in the Minister for Western Australian Government Railways by the *Government Railways Act 1904* section 4(1) become at that time the property of the Authority.
- (7) The reference in subsection (6) to Government railways other than Crown land includes a reference to anything that is on Crown land.
- (8) Subsections (5) and (6) do not limit the assignment by subsection (1) to the Authority of any asset belonging immediately before the commencement time to a former body.

82. Completion of necessary transactions

- (1) If, to any extent, section 81 cannot have effect as described in this Division (whether because a matter is governed otherwise than by the law of the State, or for any other reason), the relevant parties are each to take all practicable steps for the purpose of securing that the effect sought to be achieved by this Division is achieved as soon as possible after the commencement time.
- (2) Despite the repeals effected by sections 100 and 103, each of the former bodies is preserved for the purposes of doing things under subsection (1), and the Minister may execute documents for, and otherwise act on behalf of, each of those bodies for the purposes of doing those things.

83. Registration of documents

- (1) The Authority is to cause to be delivered to each relevant official a schedule, in a form acceptable to the relevant official, of the information that the relevant official needs in order to register changes effected by this Division.

- (2) The relevant officials are to take notice of this Division and are to record and register in the appropriate manner the documents necessary to show the effect of this Division.
- (3) In this section —
“**relevant official**” means —
 - (a) the Registrar of Titles;
 - (b) the Registrar of Deeds;
 - (c) the Minister administering the *Mining Act 1978*; or
 - (d) any other person authorised by a written law to record and give effect to the registration of documents relating to property transactions,according to which, if any, of them has responsibility for a register relating to the relevant property;
“**relevant property**” means property of a kind affected by this Division, whether it is an estate or interest in land or any other property.

84. By-laws under *Government Railways Act 1904* section 23 continue

By-laws that, immediately before the commencement time, are in force under the *Government Railways Act 1904* section 23 continue under that section as if they had been made by the Authority.

85. References in written laws to former bodies

- (1) A reference in a written law in force immediately before the commencement time to a former body is to be construed, after that time, as a reference to the Authority unless in the context it would be inappropriate to do so.
- (2) Subsection (1) does not apply to anything for which this Act has made other provision.

Division 5 — State tax implications of transitions

92. Exemption from State tax

- (1) In this section —
“**State tax**” includes stamp duty chargeable under the *Stamp Act 1921* and any other tax, duty, fee, levy or charge, under a law of the State.
- (2) State tax is not payable in relation to —
 - (a) anything that occurs by operation of this Part; or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed,

lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of, giving effect to this Part.

Division 6 — Other provisions

93. Certain contributions by former body suffice

An obligation imposed by the *Agriculture Protection Board Act 1950* section 11 on the Public Transport Authority of Western Australia to contribute in respect of a year is satisfied to the extent that The Western Australian Government Railways Commission had, before section 140 commenced, already made a contribution in respect of that year under that section.

94. Tourist railways

If, immediately before the commencement of section 123, an order was in force under the *Government Railways Act 1904* section 66A (the “**former order**”) authorising a person to occupy land for a tourist railway, the land is to be regarded as having been —

- (a) reserved under the *Land Administration Act 1997* section 41 for the purposes of operating a tourist railway; and
- (b) placed under the care, control, and management of that person for the purposes described in paragraph (a) by an order under the *Land Administration Act 1997* section 46 containing the same conditions as applied under the former order.

95. Saving

The operation of a provision of this Part is not to be regarded as —

- (a) a breach of contract or confidence or any other civil wrong;
- (b) a breach of a contractual provision prohibiting, restricting, or regulating the assignment or transfer of assets or liabilities or the disclosure of information;
- (c) giving rise to a remedy by a party to an instrument, or causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset or liability;
- (d) causing any contract or instrument to be void or otherwise unenforceable; or
- (e) releasing, or allowing the release of, any surety.

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