

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

---

*(As read a first time)*

**AUSTRALIAN NATIONAL RAILWAYS COMMISSION BILL 1983**

**TABLE OF PROVISIONS**

**PART I—PRELIMINARY**

Clause

1. Short title
2. Commencement
3. Interpretation

**PART II—FUNCTIONS, POWERS AND DUTIES OF THE COMMISSION**

4. The Australian National Railways Commission
5. Functions of Commission
6. General powers of Commission
7. Limitation on contracts and lease-back arrangements
8. Powers of Commission to participate in formation of companies, & c.
9. Land transport other than rail
10. Joint services
11. Conferral of functions and powers on Commission by State and Territory laws
12. Power to connect with railways operated by other persons
13. Sale and supply of travellers' requisites
14. Construction of railways
15. Power to enter land, & c.
16. Powers relating to construction, & c., of railways
17. Commission to take steps to do as little damage as practicable
18. General duties of Commission

TABLE OF PROVISIONS—*continued*

- Clause
19. Directions to Commission
  20. Reimbursement of cost of complying with directions
  21. Charges for services
  22. Corporate objectives, & c.
  23. Delegation

## PART III—CONSTITUTION AND MEETINGS OF THE COMMISSION

24. Constitution of Commission
25. Period of appointment of Commissioners
26. Remuneration and allowances of Commissioners
27. Leave of absence
28. Resignation
29. Acting Chairman
30. Acting Deputy Chairman
31. Acting Commissioner
32. Termination of appointment
33. Disclosure of interests
34. Meetings of Commission

## PART IV—THE STAFF OF THE COMMISSION

*Division 1—General Manager*

35. General Manager
36. Remuneration and allowances of General Manager

*Division 2—The Railway Service*

37. The Railway Service
38. Terms and conditions of employment
39. Promotions Appeal Boards
40. Appeals against promotions or directions to act
41. Disciplinary Appeal Boards
42. Appeals against decisions made in cases of misconduct
43. Witnesses before Disciplinary Appeal Boards
44. Long service leave entitlements of employees to whom By-law 70 was applicable

*Division 3—Special provisions relating to transferred South Australian and Tasmanian employees*

45. Superannuation
46. Long service leave entitlements of transferred South Australian employees
47. Compensation payable to certain transferred South Australian employees
48. Application of certain provisions of the *Compensation (Commonwealth Government Employees) Act 1971* to transferred employees

*Division 4—Powers and Functions of the Australian Conciliation and Arbitration Commission in respect of the Railway Service*

49. Interpretation
50. Settlement of industrial disputes and determination of industrial matters in respect of the Railway Service
51. Application of provisions of the *Conciliation and Arbitration Act 1904*
52. Awards deemed to be made under the *Conciliation and Arbitration Act 1904*
53. *Public Service Arbitration Act 1920* not to apply

## PART V—FINANCE

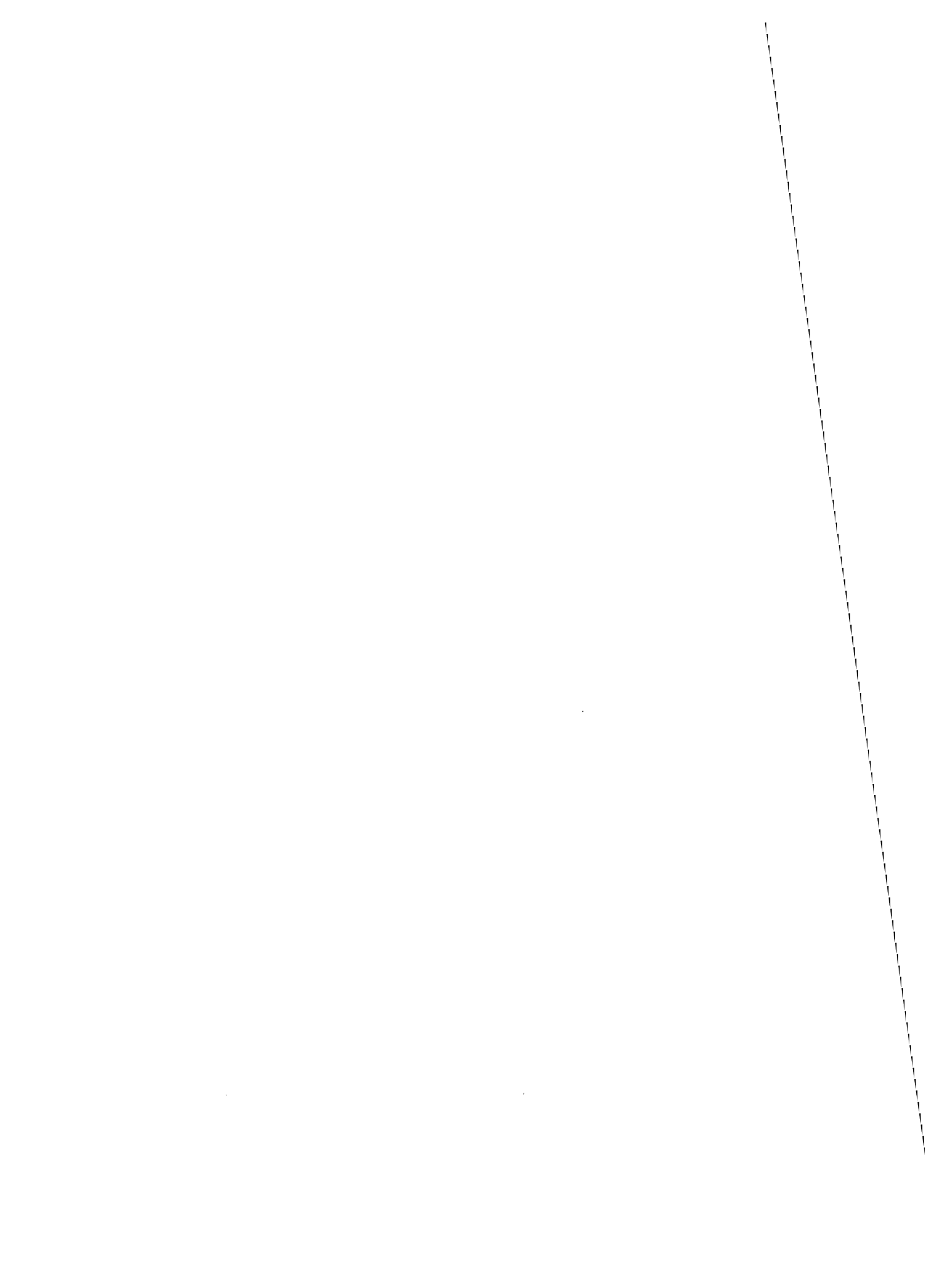
54. Capital of Commission
55. Financial policy

TABLE OF PROVISIONS—*continued*

Clause	
56.	Measures to be taken where financial target not attained, & c.
57.	Payment of dividend to Commonwealth
58.	Profits of Commission
59.	Estimates
60.	Application of moneys
61.	Borrowings from Commonwealth
62.	Borrowings otherwise than from Commonwealth
63.	Guarantees
64.	Commission may give security
65.	Borrowings not otherwise permitted
66.	Application of Division 2 of Part XI of the <i>Audit Act 1901</i>
67.	Liability to taxation

## PART VI—MISCELLANEOUS

68.	Closing of railways
69.	Reports of accidents, & c., to be supplied to Minister
70.	Inquiries into accidents, & c.
71.	Reports to Minister
72.	Commission not common carrier
73.	Service of notices
74.	Railways need not be fenced
75.	Act subject to Railways Agreement Acts
76.	Closing of roads
77.	Compensation for acquisition of property
78.	Endangering safety of trains, & c.
79.	By-laws
80.	Regulations



1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

---

Presented and read a first time, 16 November 1983

(*Minister for Transport*)

**A BILL**

FOR

**An Act relating to the Australian National Railways  
Commission**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**PART I—PRELIMINARY**

**Short title**

5     **1.** This Act may be cited as the *Australian National Railways Commission Act 1983*.

**Commencement**

**2.** This Act shall come into operation on a day to be fixed by Proclamation.

**Interpretation**

10     **3. (1)** In this Act, unless the contrary intention appears—  
“acting Chairman” means a person who is acting as Chairman in pursuance  
of an appointment under sub-section 29 (1);  
“acting Commissioner” means a person who is acting as a Commissioner in  
pursuance of an appointment under sub-section 31 (1);  
15     “acting Deputy Chairman” means a person who is acting as Deputy  
Chairman in pursuance of an appointment under sub-section 30 (1);  
“appoint” includes re-appoint;

“Chairman” means the Chairman of the Commission;

“Commission” means the Australian National Railways Commission;

“Deputy Chairman” means the Deputy Chairman of the Commission;

“employee”, in relation to the Commission, means any person appointed as an officer, or engaged as an employee, of the Commission;

5

“financial year” means the 12 months ending on 30 June;

“General Manager” means the General Manager of the Commission;

“goods” includes movable personal property of any kind;

“long service leave” includes long leave, furlough, extended leave or any other leave in the nature of long service leave (however described);

10

“securities” includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents;

“transferred South Australian employee” means a person who was, in pursuance of section 13 of the *Railways Agreement (South Australia) Act 1975*, appointed as an officer, or engaged as an employee, of the Commission;

15

“transferred Tasmanian employee” means a person who was, in pursuance of section 11 of the *Railways (Tasmania) Act 1975*, appointed as an officer, or engaged as an employee, of the Commission.

20

(2) A reference in this Act to dealing with securities includes a reference to—

- (a) creating, executing, entering into, drawing, making, accepting, indorsing, issuing, discounting, selling, purchasing or reselling securities;
- (b) creating, selling, purchasing or reselling rights or options in respect of securities; and
- (c) entering into agreements or other arrangements relating to securities.

25

(3) Where under a provision of this Act the Commission is, for any purpose, empowered to enter on, and inspect, occupy or do any other act or thing on, over or under, land, the provision shall be read as also empowering an employee of the Commission, a person acting for or on behalf of the Commission under a contract and an employee of such a person to enter on, and inspect, occupy or do that act or thing on, over or under, the land for that purpose.

30

35

(4) A reference in this Act to the carriage of passengers and goods between prescribed places is a reference to the carriage of passengers and goods between—

- (a) a place in a State and a place in another State;
- (b) a place in a State and a place in a Territory; or
- (c) a place in a Territory and a place in the same or another Territory.

40

## PART II—FUNCTIONS, POWERS AND DUTIES OF THE COMMISSION

### The Australian National Railways Commission

5 4. (1) The Australian National Railways Commission, being the Commission established under the *Australian National Railways Act 1917*, is continued in existence.

(2) The Commission—

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal; and
- 10 (c) may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Commission appearing on a document and shall presume that the document was duly sealed.

### Functions of Commission

15 5. The functions of the Commission are—

- (a) to provide railway services for the carriage of passengers and goods—
  - (i) over railways acquired from the States in accordance with paragraph 51 (xxxiii) of the Constitution;
  - 20 (ii) over railways constructed or extended in the States in accordance with paragraph 51 (xxxiv) of the Constitution; and
  - (iii) between prescribed places;
- (b) to provide such other services as the Commission is authorized by this Act to provide;
- 25 (c) to provide technical, engineering and other services to the Commonwealth and authorities of the Commonwealth;
- (d) to provide, at the request of the Commonwealth Government or with the approval of the Minister, technical, engineering and other services outside Australia;
- 30 (e) to do anything incidental or conducive to the performance of the functions referred to in any of the preceding paragraphs; and
- (f) to provide, in Australia, to persons other than the Commonwealth and authorities of the Commonwealth such technical, engineering and other services as can conveniently be provided by the use of the resources of the Commission that are not immediately required by the Commission for the performance of the functions referred to in the preceding paragraphs.
- 35

### General powers of Commission

40 6. (1) Subject to this Act, the Commission has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions and, in particular, has power—

- (a) to enter into contracts;

- (b) to acquire, hold and dispose of real and personal property;
- (c) to occupy, use and control any land or building owned or held under lease by the Commonwealth or a State or Territory and made available to the Commission;
- (d) to construct railways; 5
- (e) to erect buildings and structures and carry out works;
- (f) to manufacture plant, machinery, equipment and goods;
- (g) to hire out plant, machinery, equipment and goods that are not immediately required by the Commission for the performance of its functions; 10
- (h) to provide transport, accommodation, provisions and facilities for employees of the Commission and their families;
- (j) to appoint agents and attorneys and to act as an agent for other persons;
- (k) to engage consultants; and 15
- (m) to do anything incidental to any of its powers.

(2) The powers of the Commission may be exercised both within and outside Australia.

#### **Limitation on contracts and lease-back arrangements**

7. (1) The Commission shall not, without the approval of the Minister— 20
- (a) enter into a contract under which the Commission is to pay or receive an amount exceeding \$2,000,000 or, if a higher amount is prescribed by the regulations, that higher amount; or
  - (b) enter into a contract or arrangement with another person under which the other person agrees to acquire real or personal property to be leased, or let on hire, to the Commission. 25

(2) The reference in paragraph (1) (a) to a contract does not include a reference to a contract for the carriage of passengers or goods by the Commission.

- (3) An approval under sub-section (1) may be given in relation to— 30
- (a) a particular contract or arrangement; or
  - (b) contracts or arrangements included in a class of contracts or arrangements.

(4) An approval under sub-section (1) shall be given by instrument in writing. 35

#### **Powers of Commission to participate in formation of companies, &c.**

8. (1) The Commission shall not, without the approval of the Minister—
- (a) participate in the formation of a company;
  - (b) subscribe for, or otherwise acquire, shares in a company;
  - (c) enter into a partnership; or 40
  - (d) enter into an arrangement for the sharing of receipts or profits.



(2) An approval under sub-section (1) shall be given by instrument in writing.

(3) The Minister shall not give his approval under sub-section (1) to the participation by the Commission in the formation of a company the powers of which will extend to the doing of an act or thing that the Commission itself is not empowered to do unless he is satisfied that the participation by the Commission in the formation of the company would be conducive to the performance of a function of the Commission.

(4) The Minister shall not give his approval under sub-section (1) to the subscription by the Commission for, or other acquisition by the Commission of, shares in a company the powers of which extend to the doing of an act or thing that the Commission itself is not empowered to do unless he is satisfied that the holding of the shares by the Commission would be conducive to the performance of a function of the Commission.

(5) If—

(a) after the Commission subscribes for, or otherwise acquires, shares in a company, the Minister becomes satisfied that the holding of the shares by the Commission is no longer conducive to the performance of any function of the Commission; or

(b) the memorandum of association or articles of association of a company in which the Commission holds shares are altered so as to empower the company to do an act or thing that the Commission itself is not empowered to do and the Minister is not satisfied that the continued holding by the Commission of the shares would be conducive to the performance of any function of the Commission,

the Minister shall, by notice in writing to the Commission, direct the Commission to dispose of the shares and the Commission shall comply with the direction as soon as practicable.

### **Land transport other than rail**

9. (1) The Commission may (as incidental or supplementary to, or in association with, the provision of railway services) provide services for the carriage of passengers and goods by land, otherwise than by rail, between—

(a) prescribed places;

(b) to the extent necessary to carry out an arrangement under section 10—a place in a State and another place in that State; or

(c) to the extent provided by sub-section (2)—a place in a State and another place in that State.

(2) The powers of the Commission by virtue of paragraph (1) (c) may be exercised only in so far as the exercise of those powers is incidental to the exercise of another power, or other powers, of the Commission.

**Joint services**

**10.** The Commission may make and carry out an arrangement with any person—

- (a) for the carriage of passengers and goods between—
  - (i) prescribed places; or 5
  - (ii) a place in Australia and a place outside Australia; and
- (b) under which the passengers and goods are to be carried partly by the Commission (whether by rail or otherwise) and partly by the other person.

**Conferral of functions and powers on Commission by State and Territory laws** 10

**11. (1)** It is the intention of the Parliament that, subject to sub-section (2), the Commission shall have and perform and may exercise, in addition to the functions and powers conferred on it by this Act, functions and powers conferred on it specifically by a law of a State or Territory, being functions and powers relating to land transport in the State or Territory. 15

**(2)** The regulations may provide that sub-section (1) does not extend to all or any of the functions or powers expressed to be conferred on the Commission by a law of a State or Territory.

**Power to connect with railways operated by other persons**

- 12.** The Commission, by arrangement with another person, may— 20
- (a) subject to section 14, connect a railway operated by the Commission with a railway operated by the person;
  - (b) permit a railway operated by the person to be connected with a railway operated by the Commission;
  - (c) run its locomotives and other rolling stock over a railway operated by the person; or 25
  - (d) permit locomotives and other rolling stock of the person to run over a railway operated by the Commission.

**Sale and supply of travellers' requisites**

**13. (1)** Without limiting the generality of sub-section 6 (1), the Commission may— 30

- (a) sell and supply travellers' requisites on passenger trains; and
- (b) sell and supply travellers' requisites, on premises set aside under sub-section (2), to persons travelling on services operated by the Commission and to other persons. 35

**(2)** The Commission may set aside premises owned or occupied by it for the sale and supply of travellers' requisites to persons travelling on services operated by the Commission and to other persons.

**(3)** Where the Commission leases to a person premises set aside under sub-section (2), the Commission may, in writing, grant to the person an authority, for such term, and subject to such conditions, as are specified in the 40

authority, to sell and supply, on the premises, travellers' requisites to persons travelling on services operated by the Commission and to other persons.

(4) The Commission shall—

- (a) in selling and supplying travellers' requisites on premises set aside under sub-section (2), ensure; and
- (b) specify in each authority granted under sub-section (3), in relation to premises set aside under sub-section (2), conditions for the purpose of ensuring,

that, as far as is reasonably practicable, goods are not sold or supplied on the premises to persons resorting to the premises solely or principally for the purpose of obtaining those goods at times outside the days and hours of trading or business that would, but for this section, be applicable, under the law of the State or Territory in which the premises are situated, in relation to the sale or supply of those goods.

(5) The Commission may exercise its powers under this section, the employees of the Commission may act in accordance with the powers of the Commission under this section and a person who holds an authority under sub-section (3), and the servants and agents of such a person, may, subject to the conditions to which the authority is subject, act in accordance with the authority, without obtaining or having any other authority, licence, permit or registration.

(6) Notwithstanding any law of a State or Territory to the contrary—

- (a) the Commission, and its employees, may permit the consumption, on passenger trains and on premises set aside under sub-section (2), of meals and refreshments;
- (b) a person who holds an authority under sub-section (3), and his servants and agents, may permit the consumption, on the premises to which the authority relates, of meals and refreshments; and
- (c) a person may, on a passenger train or on premises set aside under sub-section (2), obtain and consume meals and refreshments sold or supplied in accordance with this section.

(7) Except as expressly provided in this section, this section does not exempt a person from compliance with the law of a State or Territory.

(8) In this section—

“passenger train” means a train operated by the Commission that is carrying, or waiting to carry, passengers;

“refreshments” includes alcoholic beverages;

“travellers' requisites” means—

- (a) meals;
- (b) refreshments;
- (c) tobacco, cigars, cigarettēs, pipes and other smokers' requisites; and

- (d) other goods required, or likely to be required, by persons while travelling on services operated by the Commission.

### **Construction of railways**

**14. (1)** The Commission shall not construct a railway in Australia that is more than 25 kilometres in length unless the Parliament has, by an Act, authorized the construction of the railway by the Commission. 5

(2) A Bill to authorize the construction of a railway by the Commission shall contain provisions relating to the following matters:

- (a) a detailed description of the route of the proposed railway;  
 (b) the limit of deviation; 10  
 (c) the estimated cost of the construction of the proposed railway.

(3) Notwithstanding any law of the Commonwealth (other than this Act) or any law of a State or Territory to the contrary—

- (a) the Commission may, with the approval of the Governor-General, construct a railway on, over or under land that, under the law of a State or Territory, is dedicated or reserved, or is vested in trustees, as a public park or otherwise for the purposes of public recreation; and 15

- (b) the Commission may construct a railway on, over or under any road.

(4) The power under sub-section (3) to construct a railway on, over or under land or a road, includes the power— 20

- (a) to erect on, over or under the land or road, as the case may be, buildings or other structures for use in connection with the railway; and  
 (b) to install equipment on, over or under the land or road, as the case may be, for use in connection with the railway. 25

(5) The Commission shall not exercise its powers under sub-section (3) in relation to land or a road unless it has given reasonable notice, in writing, of its intention to do so to the authority having care and management of the land or road, as the case may be.

### **Power to enter land, &c.** 30

**15. (1)** The Commission may—

- (a) for the purpose of ascertaining the suitability of any land (including land owned or occupied by the Commonwealth or a State or Territory) for the purposes of the Commission—

- (i) enter on, and inspect, the land; and 35

- (ii) on land so entered, do any act or thing necessary or convenient for that purpose, including, without limiting the generality of the foregoing, making surveys, taking levels, sinking bores, taking samples, digging pits and examining the soil; and

(b) for the purpose of surveying or obtaining information in relation to any land that, in the opinion of the Commission, is or may be suitable for the purposes of the Commission—

(i) enter on adjacent land (including land owned or occupied by the Commonwealth or a State or Territory); and

(ii) on land so entered, do any act or thing necessary or convenient for that purpose, including, without limiting the generality of the foregoing, making surveys and taking levels.

(2) The Commission shall, before exercising its powers under sub-section (1) in relation to any land, give reasonable notice, in writing, of its intention to do so to—

(a) the owner of the land; and

(b) if the land is occupied by a person other than the owner of the land—the occupier of the land.

(3) A notice under sub-section (2) in relation to land shall specify the purpose for which the Commission intends to exercise its powers under sub-section (1) in relation to the land.

**Powers relating to construction, &c., of railways**

16. (1) The Commission may, for purposes connected with the construction, maintenance, alteration or repair of a railway—

(a) enter on, and occupy, any land (including land owned or occupied by the Commonwealth or a State or Territory); and

(b) on, over or under land so entered or occupied, do any act or thing necessary or convenient for those purposes, including, without limiting the generality of the foregoing—

(i) diverting or altering, temporarily or permanently, the course of any watercourse;

(ii) raising or lowering, temporarily or permanently, the level of any watercourse or other body of water;

(iii) placing any plant, machinery, equipment or goods;

(iv) taking or depositing sand, clay, stone, earth, gravel, timber, wood or other materials or things;

(v) felling or lopping trees and clearing or removing other vegetation or undergrowth;

(vi) making cuttings, embankments, excavations or tunnels;

(vii) manufacturing or working materials, goods or things;

(viii) erecting temporary workshops, sheds or other buildings;

(ix) constructing roads or bridges;

(x) temporarily closing, diverting or narrowing any road;

(xi) breaking the surface of any road for the purpose of laying down railway tracks, drains, pipes, cables, wires and other things;

(xii) altering the position of any main, pipe, cable or wire;

- (xiii) taking water from any watercourse or other body of water; and
- (xiv) demolishing, destroying or removing any plant, machinery, equipment, goods, workshop, shed or building placed or erected on the land in pursuance of this sub-section.

(2) The Commission shall, before exercising its powers under sub-section (1) in relation to any land, give reasonable notice, in writing, of its intention to do so to— 5

- (a) the owner of the land; and
- (b) if the land is occupied by a person other than the owner of the land—the occupier of the land. 10

(3) A notice under sub-section (2) in relation to land shall specify the purpose for which the Commission intends to exercise its powers under sub-section (1) in relation to the land.

(4) The Commission shall not, in the exercise of its powers under sub-section (1)— 15

- (a) close, divert or narrow, or break the surface of, a road;
- (b) alter the position of any water, sewerage or gas main or pipe; or
- (c) alter the position of any electricity or telecommunications cable or wire,

unless it has given reasonable notice, in writing, of its intention to do so to the authority having the care and management of the road, main, pipe, cable or wire. 20

(5) In this section, “watercourse” includes any river, stream, ditch, drain or other channel or passage through which water flows.

**Commission to take steps to do as little damage as practicable** 25

17. (1) The Commission shall take all reasonable steps to ensure that, in exercising its powers under sections 15 and 16, it causes as little detriment and inconvenience, and does as little damage, as is practicable.

(2) Where the owner or occupier of land suffers loss or damage by reason of the exercise in relation to the land of any of the Commission’s powers under section 15 or 16, the Commission is liable to pay him such compensation as is agreed upon between them or, in the absence of agreement, such compensation as is determined by a court of competent jurisdiction. 30

(3) Compensation under sub-section (2) shall include compensation in respect of— 35

- (a) damage of a temporary character as well as of a permanent character; and
- (b) the taking of sand, clay, stone, earth, gravel, timber, wood, water and other materials or things.

(4) In this section—

“court of competent jurisdiction”, in relation to the owner or occupier of land, means—

- (a) the Supreme Court of the State or Territory in which the land is situated; or
- (b) a County Court, District Court, Local Court or other court of a State or Territory presided over by a Judge or Magistrate, being a court that has jurisdiction—
  - (i) in actions for the recovery of debts up to an amount not less than the amount of compensation claimed by the owner or occupier of the land; and
  - (ii) in respect of the locality in which the land, or part of the land, is situated;

“owner”, in relation to land, means a person who—

- (a) owns any legal or equitable estate in the land;
- (b) has any legal or equitable interest in the land; or
- (c) has any right, power or privilege over, or in connection with, the land.

#### **General duties of Commission**

**18. (1)** The Commission shall conduct its operations safely, efficiently and, subject to sub-sections 19 (3) and 55 (3), in a manner that accords with sound commercial practice.

**(2)** Nothing in sub-section (1) shall be taken to impose on the Commission a duty that is enforceable by proceedings in a court.

#### **Directions to Commission**

**19. (1)** Except as provided by this section or as otherwise expressly provided by this Act, the Commission is not subject to direction by or on behalf of the Government of the Commonwealth.

**(2)** Where the Minister is satisfied that it is desirable in the public interest to do so, he may, by notice in writing to the Commission, give directions to the Commission with respect to the performance of its functions or duties or the exercise of its powers.

**(3)** The Commission shall comply with any direction given to it by the Minister under sub-section (2).

**(4)** Where the Minister gives a direction to the Commission under sub-section (2), he shall cause a statement setting out particulars of, and the reasons for, the direction to be laid before each House of the Parliament within 7 sitting days of that House after the giving of the direction.

#### **Reimbursement of cost of complying with directions**

**20. (1)** Where the Commission satisfies the Minister that it has, during any period, suffered financial detriment as a result of complying with a direction

under sub-section 19 (2), the Commission is entitled to be reimbursed by the Commonwealth the amount that the Minister determines, by instrument in writing, to be the amount of the financial detriment suffered by the Commission during the period.

(2) The reference in sub-section (1) to the Commission suffering financial detriment as a result of complying with a direction under sub-section 19 (2) includes a reference to the Commission— 5

- (a) suffering a loss in complying with such a direction;
- (b) incurring costs, in complying with such a direction, that are greater than the costs that the Commission would otherwise have incurred; or 10
- (c) forgoing revenue, in complying with such a direction, that the Commission would otherwise have received.

### **Charges for services**

21. (1) The rates of charges for any service provided by the Commission shall be such as the Commission, subject to this section and to sub-sections 18 (1), 19 (3) and 55 (3), fixes for the service. 15

(2) The Commission shall, as soon as practicable after the commencement of this Act—

- (a) determine, by instrument in writing, the principles in accordance with which it proposes to fix rates of charges for prescribed services; and 20
- (b) inform the Minister, by notice in writing, of the principles that it has so determined.

(3) The Minister may, before the expiration of the period of 60 days after receipt by him of the notice referred to in paragraph (2) (b)—

- (a) determine, by instrument in writing, the principles in accordance with which the Commission is to fix rates of charges for a prescribed service or for the prescribed services included in a class of prescribed services; and 25
- (b) inform the Commission, by notice in writing, of the principles so determined and the reasons for the determination. 30

(4) Where the Commission proposes to make an alteration to the principles in accordance with which it fixes rates of charges for a prescribed service or for the prescribed services included in a class of prescribed services, the Commission shall inform the Minister, by notice in writing, of the proposed alteration. 35

(5) Where the Minister receives a notice under sub-section (4) of a proposed alteration to the principles in accordance with which the Commission fixes rates of charges for a prescribed service or for the prescribed services included in a class of prescribed services, the Minister may, before the expiration of 60 days after receipt by him of the notice, by instrument in writing— 40

- (a) approve the proposed alteration to those principles;



(b) determine an alteration to those principles that is different from the alteration proposed in the notice; or  
(c) refuse to agree to any alteration to those principles,  
and inform the Commission, by notice in writing, of the approval,  
5 determination or refusal, as the case may be.

(6) If the Minister does not, before the expiration of 60 days after the receipt by him of a notice under sub-section (4) proposing an alteration to the principles in accordance with which the Commission fixes rates of charges for a prescribed service or for the prescribed services included in a class of prescribed  
10 services—

(a) approve the alteration proposed in the notice;  
(b) determine an alteration to the principles that is different from the alteration proposed in the notice; or  
(c) refuse to agree to any alteration to the principles,  
15 and inform the Commission as mentioned in sub-section (5), he shall be deemed to have, at the expiration of that period, approved, under sub-section (5), the alteration proposed in the notice.

(7) The Commission shall not fix a rate of charge for a prescribed service otherwise than—

(a) if the Commission has determined principles under sub-section (2) in relation to the prescribed service, the Minister has not determined principles under sub-section (3) in relation to the prescribed service and no alteration to the principles determined by the Commission has been approved or determined under sub-section (5) in relation to the  
20 prescribed service—in accordance with the principles so determined by the Commission;  
25  
(b) if the Minister has determined principles under sub-section (3) in relation to the prescribed service and no alteration to those principles has been approved or determined under sub-section (5)—in accordance with the principles so determined by the Minister; or  
30  
(c) if any principles are applicable in relation to the prescribed service by virtue of a determination under sub-section (2) or (3) and an alteration has or alterations have been approved or determined under sub-section (5) to those principles—in accordance with those  
35 principles as so altered by the alteration or alterations.

(8) A reference in this section to a prescribed service is a reference to a service for the carriage of passengers or goods.

**Corporate objectives, &c.**

22. (1) The Commission shall—

(a) develop objectives, strategies and policies for the purpose of ensuring that it fulfils, on a long-term basis, its duties under this Act; and  
40  
(b) from time to time, review and revise the objectives, strategies and policies that it has developed for that purpose.

(2) The Commission shall, in performing its functions and duties and exercising its powers, have regard to the objectives, strategies and policies developed by it under sub-section (1).

(3) The Commission shall, in accordance with sub-sections (4) and (5), furnish written reports to the Minister concerning the objectives, strategies and policies developed by it under sub-section (1). 5

(4) The first report under sub-section (3) shall be furnished to the Minister before the expiration of the period of 12 months after the day on which this Act comes into operation.

(5) The Commission shall ensure that not more than 12 months elapse between the furnishing to the Minister of a report under sub-section (3) and the furnishing to the Minister of the next such report. 10

### **Delegation**

23. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a person any of its powers under this Act, other than this power of delegation. 15

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Commission.

(3) A delegation under this section does not prevent the exercise of a power by the Commission. 20

## **PART III—CONSTITUTION AND MEETINGS OF THE COMMISSION**

### **Constitution of Commission**

24. (1) The Commission shall consist of 7 Commissioners, namely—

(a) the Chairman of the Commission; 25

(b) the Deputy Chairman of the Commission; and

(c) 5 other Commissioners.

(2) The Commissioners shall be appointed by the Governor-General.

(3) A person may hold, at the same time, the office of a Commissioner (other than the office of Chairman) and the office of General Manager. 30

(4) The Chairman may be appointed on either a full-time or part-time basis.

(5) The Commissioners (other than the Chairman) shall be appointed on a part-time basis.

(6) The Chairman, Deputy Chairman and other Commissioners hold office on such terms and conditions (in respect of matters not provided for by this Act) as are determined by the Minister by instrument in writing. 35

(7) The performance of the functions, and the exercise of the powers, of the Commission are not affected by reason only of there being a vacancy or vacancies in the membership of the Commission.

**Period of appointment of Commissioners**

5       **25. (1)** Subject to this Part, a Commissioner holds office for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

10       **(2)** If a Commissioner ceases to hold office before the expiration of the period of his appointment, another person may, in accordance with this Part, be appointed in his place until the expiration of that period.

**(3)** A person who has attained the age of 65 years shall not be appointed as the Chairman on a full-time basis.

15       **(4)** A person shall not be appointed as the Chairman on a full-time basis for a period that extends beyond the date on which he will attain the age of 65 years, but may be appointed for a period of less than 5 years that expires on that date.

**Remuneration and allowances of Commissioners**

20       **26. (1)** The Chairman, Deputy Chairman and other Commissioners shall be paid by the Commission such remuneration as is determined by the Remuneration Tribunal.

**(2)** If no determination by the Tribunal of the remuneration of the Deputy Chairman is in operation, the Deputy Chairman shall be paid by the Commission such remuneration as is prescribed by the regulations.

25       **(3)** The Chairman, Deputy Chairman and other Commissioners shall be paid by the Commission such allowances as are prescribed by the regulations.

**(4)** This section has effect subject to the *Remuneration Tribunals Act 1973*.

**Leave of absence**

30       **27.** The Minister may grant leave of absence to a Commissioner on such terms and conditions as to remuneration or otherwise as the Minister determines by instrument in writing.

**Resignation**

**28.** A Commissioner may resign his office by writing signed by him and delivered to the Governor-General.

35       **Acting Chairman**

**29. (1)** Subject to sub-section (2), the Minister may appoint the Deputy Chairman, another Commissioner or another person—

- (a) to act as Chairman, on a full-time or part-time basis, during a vacancy in the office of Chairman;

- (b) where the Chairman has been appointed on a full-time basis—to act as Chairman, on a full-time or part-time basis, during any period, or during all periods, when the Chairman is absent from duty or from Australia or is, for any reason, unable to perform the duties of his office; or 5
- (c) where the Chairman has been appointed on a part-time basis—to act as Chairman, on a part-time basis, during any period, or during all periods, when the Chairman is absent from Australia or is, for any reason, unable to perform the duties of his office.
- (2) The General Manager shall not be appointed to act as Chairman. 10
- (3) An appointment to act as Chairman may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (4) A person appointed under sub-section (1) to act during a vacancy in the office of Chairman shall not continue so to act for more than 12 months.
- (5) Where a person is acting as Chairman otherwise than by reason of a vacancy in the office of Chairman and the office becomes vacant while the person is so acting, then, subject to sub-section (3), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurs expires, whichever first occurs. 15 20
- (6) While a person is acting as Chairman, he has and may exercise all the powers, and shall perform all the duties, of the Chairman.
- (7) The Minister may—
- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as Chairman; and 25
- (b) terminate such an appointment at any time.
- (8) A person appointed to act as Chairman may resign his appointment by writing signed by him and delivered to the Minister.
- (9) The validity of anything done by or in relation to a person purporting to act as Chairman shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased. 30
- Acting Deputy Chairman** 35
30. (1) The Minister may appoint a Commissioner or another person to act as Deputy Chairman—
- (a) during a vacancy in the office of Deputy Chairman, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Deputy Chairman is acting as Chairman, is absent from Australia or is, for any reason, unable to perform the duties of his office. 40

(2) An appointment to act as Deputy Chairman may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

5 (3) A person appointed under sub-section (1) to act during a vacancy in the office of Deputy Chairman shall not continue so to act for more than 12 months.

10 (4) Where a person is acting as Deputy Chairman otherwise than by reason of a vacancy in the office of Deputy Chairman and the office becomes vacant while the person is so acting, then, subject to sub-section (2), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurs expires, whichever first occurs.

(5) While a person is acting as Deputy Chairman, he has and may exercise all the powers, and shall perform all the duties, of the Deputy Chairman.

15 (6) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as Deputy Chairman; and

(b) terminate such an appointment at any time.

20 (7) A person appointed to act as Deputy Chairman may resign his appointment by writing signed by him and delivered to the Minister.

25 (8) The validity of anything done by or in relation to a person purporting to act as Deputy Chairman shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

### **Acting Commissioner**

30 31. (1) The Minister may appoint a person to act as a Commissioner—

(a) during a vacancy in the office of a Commissioner; or

(b) during any period, or during all periods, when a Commissioner is acting as Chairman or Deputy Chairman, is absent from Australia or is, for any reason, unable to perform the duties of his office.

35 (2) An appointment to act as a Commissioner may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) A person appointed under sub-section (1) to act during a vacancy in the office of a Commissioner shall not continue so to act for more than 12 months.

40 (4) Where a person is acting as a Commissioner otherwise than by reason of a vacancy in the office of a Commissioner and the office becomes vacant

while the person is so acting, then, subject to sub-section (2), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurs expires, whichever first occurs.

(5) While a person is acting as a Commissioner, he has and may exercise all the powers, and shall perform all the duties, of a Commissioner. 5

(6) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act as a Commissioner; and 10
- (b) terminate such an appointment at any time.

(7) A person appointed to act as a Commissioner may resign his appointment by writing signed by him and delivered to the Minister.

(8) The validity of anything done by or in relation to a person purporting to act as a Commissioner shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased. 15

(9) A reference in this section to a Commissioner does not include a reference to the Chairman or Deputy Chairman. 20

### **Termination of appointment**

32. (1) The Governor-General may terminate the appointment of a Commissioner for misbehaviour or physical or mental incapacity.

(2) If— 25

- (a) a Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) a Commissioner, being a Chairman who has been appointed on a full-time basis— 30

- (i) engages, except with the approval of the Minister, in paid employment outside the duties of his office; or

- (ii) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or 28 days in any 12 months;

- (c) a Commissioner, not being a Chairman who has been appointed on a full-time basis, is absent, except on leave of absence granted by the Minister, from 3 consecutive meetings of the Commission; or 35

- (d) a Commissioner fails, without reasonable excuse, to comply with his obligations under section 33,

the Governor-General shall terminate the appointment of the Commissioner. 40

**Disclosure of interests**

5 **33. (1)** A Commissioner who has a direct or indirect pecuniary interest in a matter being considered by the Commission shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Commission and the Commissioner shall not, unless the Minister or the Commission otherwise determines—

- 10 (a) be present during any deliberation of the Commission with respect to that matter; or  
(b) take part in any decision of the Commission with respect to that matter.

15 (3) For the purpose of the making of a determination by the Commission under sub-section (2) in relation to a Commissioner who has made a disclosure under sub-section (1), a Commissioner who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Commission for the purpose of making the determination; or  
(b) take part in the making by the Commission of the determination.

20 (4) A reference in this section to a Commissioner includes a reference to an acting Chairman who is not a Commissioner, to an acting Deputy Chairman who is not a Commissioner and to an acting Commissioner.

**Meetings of Commission**

25 **34. (1)** The Commission shall hold such meetings as are necessary for the efficient performance of its functions.

(2) The Chairman—

- (a) may, at any time, convene a meeting of the Commission; and  
(b) shall, on receipt of a written request signed by not less than 2 other Commissioners, convene a meeting of the Commission.

30 (3) The Minister may, at any time, convene a meeting of the Commission.

(4) The Chairman shall preside at all meetings of the Commission at which he is present.

(5) Where the Chairman is not present at a meeting of the Commission—

- 35 (a) the Deputy Chairman shall preside at the meeting; or  
(b) if the Deputy Chairman is not present at the meeting—the Commissioners present shall appoint one of their number to preside at the meeting.

(6) At a meeting of the Commission, 4 Commissioners constitute a quorum.

(7) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the Commissioners present and voting.

(8) The person presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) A reference in this section to the Chairman is, if there is an acting Chairman, a reference to the acting Chairman. 5

(10) A reference in this section to the Deputy Chairman is, if there is an acting Deputy Chairman, a reference to the acting Deputy Chairman.

(11) A reference in this section to a Commissioner includes, unless the contrary intention appears, a reference to an acting Chairman who is not a Commissioner, to an acting Deputy Chairman who is not a Commissioner and to an acting Commissioner. 10

## PART IV—THE STAFF OF THE COMMISSION

### *Division 1—General Manager*

#### **General Manager** 15

35. (1) The Commission shall appoint a person to be the General Manager of the Commission.

(2) The General Manager shall be the chief executive officer of the Commission.

(3) The General Manager holds office on such terms and conditions (in respect of matters not provided for by this Act) as are determined by the Commission by instrument in writing. 20

#### **Remuneration and allowances of General Manager**

36. (1) The General Manager shall be paid by the Commission such remuneration as is determined by the Remuneration Tribunal. 25

(2) The General Manager shall be paid by the Commission such allowances as are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

### *Division 2—The Railway Service* 30

#### **The Railway Service**

37. (1) The Railway Service established under the *Australian National Railways Act 1917* is continued in existence.

(2) The Commission may appoint such officers, and engage such employees, as it considers necessary for the performance of its functions and duties and the exercise of its powers. 35



(3) The Railway Service consists of the persons appointed as officers, or engaged as employees, of the Commission.

**Terms and conditions of employment**

5 38. (1) The terms and conditions of service or employment (in respect of matters not provided for by this Act) of the employees of the Commission are such as are determined by the Commission by instrument in writing.

(2) The terms and conditions of service and employment that may be determined under sub-section (1) include terms and conditions specifying—

- 10 (a) the grounds on which employees, or employees included in a class of employees, may be charged with misconduct;
- (b) the manner in which charges of misconduct may be dealt with; and
- (c) the kinds of action that may be taken in relation to employees against whom charges of misconduct are established.

15 (3) A certificate signed by the General Manager, or another person authorized by the Commission, by instrument in writing, for the purposes of this sub-section, that states that—

- (a) a specified document is a true copy of a determination made by the Commission under sub-section (1); or
- 20 (b) such a determination is in force or was in force during a specified period or was in force at a specified time,

is *prima facie* evidence of the matters stated in the certificate.

(4) A document purporting to be a certificate of the kind referred to in sub-section (3) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

25 **Promotions Appeal Boards**

39. (1) For the purposes of this Division, the Commission shall from time to time arrange for the establishment of such Promotions Appeal Boards as are required for the Railway Service.

30 (2) The Commission may appoint a person having the qualifications prescribed by the by-laws to be a Chairman of a Promotions Appeal Board.

(3) A Promotions Appeal Board shall be constituted, for the purposes of an appeal under section 40, by a person holding office as Chairman of a Promotions Appeal Board and such other members as are required under the by-laws.

35 (4) The members constituting a Promotions Appeal Board, other than the Chairman, shall be appointed in the manner prescribed by the by-laws.

(5) A Chairman of a Promotions Appeal Board shall be paid by the Commission such remuneration as is determined by the Remuneration Tribunal.

40 (6) A Chairman of a Promotions Appeal Board shall be paid by the Commission such allowances as are prescribed by the regulations.

(7) Sub-sections (5) and (6) have effect subject to the *Remuneration Tribunals Act 1973*.

**Appeals against promotions or directions to act**

**40. (1)** An employee who considers that—

- (a) he should have been promoted to a vacant position in the Railway Service in preference to an employee promoted to that position; or 5
- (b) he should have been directed temporarily to perform the duties of a position having a higher classification than the position held by him in preference to the employee directed temporarily to perform those duties, 10

may appeal against the promotion or direction, as the case may be.

(2) Sub-section (1) does not authorize an employee to appeal against a direction that another employee temporarily perform the duties of a position for a period that does not exceed 1 month.

(3) Upon an appeal or appeals being made against a promotion to a vacant position or against a direction temporarily to perform the duties of a position, a Promotions Appeal Board shall make a full inquiry into the claims of the appellant or appellants and into the claims of the employee promoted to the vacant position or of the employee directed temporarily to perform the duties of the position, as the case may be, and determine the appeal or appeals. 20

(4) The by-laws may make provision for and in relation to the grounds on which, the manner in which, and the time within which, an appeal may be made under this section and for and in relation to the conduct of inquiries by Promotions Appeal Boards, including provision for a Promotions Appeal Board to act as a central Promotions Appeal Board to determine an appeal, in a case where all the parties to the appeal do not perform their duties in the same State or Territory, after examining reports made to it by 2 or more other Promotions Appeal Boards and making such further inquiries (if any) as it thinks necessary into the claims of all the parties to the appeal. 25

(5) Where an appeal is allowed, the Commission shall— 30

- (a) in the case of an appeal against a promotion to a vacant position—cancel the promotion and promote the appellant to the vacant position; or
- (b) in the case of an appeal against a direction temporarily to perform the duties of a position—cancel the direction and direct the appellant temporarily to perform the duties of the position. 35

(6) Where there are 2 or more appellants in respect of one promotion to a vacant position or one direction temporarily to perform the duties of a position, the Promotions Appeal Board determining the appeals shall, if it considers that 2 or more appellants have established the grounds of their appeals, allow the appeal of 1 only of those appellants, being the appellant whom it considers to have the best claim to promotion to the vacant position or to the direction temporarily to perform the duties of the position, as the case may be. 40

(7) Where, in respect of a promotion or a direction, an appeal has, or appeals have, been duly made but the appeal or each of the appeals has been disallowed or has become inoperative, the Commission shall confirm the promotion or the direction appealed against.

5 (8) For the purposes of this section, an appeal shall be taken to have become inoperative if—

(a) the appeal is withdrawn;

(b) the appellant ceases to be an employee; or

10 (c) the appellant ceases, by reason of the confirmation of his promotion to another position or for any other reason—

(i) in the case of an appeal against a promotion to a vacant position—to be eligible for promotion to that position; or

15 (ii) in the case of an appeal against a direction temporarily to perform the duties of a position—to be eligible to be directed temporarily to perform those duties.

### Disciplinary Appeal Boards

41. (1) For the purposes of this Division, the Commission shall from time to time arrange for the establishment of such Disciplinary Appeal Boards as are required for the Railway Service.

20 (2) The Commission may appoint a person having the qualifications prescribed by the by-laws to be a Chairman of a Disciplinary Appeal Board.

(3) A Disciplinary Appeal Board shall be constituted, for the purposes of an appeal under section 42, by a person holding office as Chairman of a Disciplinary Appeal Board and such other members as are required under the by-laws.

25 (4) The members constituting a Disciplinary Appeal Board, other than the Chairman, shall be appointed in the manner prescribed by the by-laws.

(5) A Chairman of a Disciplinary Appeal Board shall be paid by the Commission such remuneration as is determined by the Remuneration Tribunal.

30 (6) A Chairman of a Disciplinary Appeal Board shall be paid by the Commission such allowances as are prescribed by the regulations.

(7) Sub-sections (5) and (6) have effect subject to the *Remuneration Tribunals Act 1973*.

### 35 Appeals against decisions made in cases of misconduct

40 42. (1) Where a decision of a kind prescribed by the by-laws is made in relation to a charge of misconduct, including a charge (whether instituted before or after the commencement of this Act) with respect to misconduct committed before the commencement of this Act, the employee charged with the misconduct may appeal to a Disciplinary Appeal Board against the decision.

(2) On the hearing of an appeal under sub-section (1), a Disciplinary Appeal Board may take evidence on oath or affirmation.

(3) The by-laws may prescribe the grounds on which, the manner in which, and the time within which, appeals may be made under sub-section (1) and the manner in which the hearing of appeals so made shall be conducted. 5

(4) A Disciplinary Appeal Board shall hear each appeal submitted to it under sub-section (1) and may confirm or set aside the decision against which the appeal is made and, if it sets the decision aside, may substitute for that decision such other decision as the person who made the decision appealed against might have made. 10

(5) A Disciplinary Appeal Board shall give reasons, in writing, for its decision on an appeal.

(6) The Commission shall take such action as is necessary to give effect to a decision of a Disciplinary Appeal Board.

#### **Witnesses before Disciplinary Appeal Boards** 15

**43. (1)** The Chairman of a Disciplinary Appeal Board may—

- (a) by writing under his hand, summon a person to attend before a Disciplinary Appeal Board at a time and place specified in the summons and then and there to give evidence and to produce such documents (if any) as are referred to in the summons; 20
- (b) require a person appearing before a Disciplinary Appeal Board to give evidence either to take an oath or make an affirmation; and
- (c) administer an oath or affirmation to a person appearing before a Disciplinary Appeal Board.

(2) Where it appears to a Disciplinary Appeal Board that it is undesirable to require the appellant or another person to attend before the Board to give evidence by reason that he is residing or performing duty outside Australia, or in a remote locality in Australia, or by reason of the expense, inconvenience or delay that would result if the person were required to appear before the Board, the Board may, by writing under the hand of the Chairman of the Board, appoint a member of the Board or another person to take the evidence of the appellant or of that other person. 25 30

(3) A witness summoned to attend or appearing before a Disciplinary Appeal Board has the same protection as a witness in proceedings in the High Court. 35

(4) A person summoned to attend, or appearing, as a witness before a Disciplinary Appeal Board shall not—

- (a) refuse or fail to be sworn or to make an affirmation or, without reasonable excuse, refuse or fail to answer any question when required to do so by a member of the Board; or 40

- (b) without reasonable excuse, refuse or fail to produce a document that he was required by the summons to produce.

Penalty: \$1,000 or imprisonment for 6 months, or both.

5 (5) An employee who is summoned to attend as a witness before a Disciplinary Appeal Board shall not, without reasonable excuse—

- (a) fail to attend before the Board; or  
(b) fail, unless excused or released by the Chairman of the Board from continuing in attendance, to continue in attendance before the Board,

as required by the summons.

10 Penalty: \$1,000 or imprisonment for 6 months, or both.

(6) A person other than an employee who is summoned to attend as a witness before a Disciplinary Appeal Board shall not, without reasonable excuse—

- 15 (a) fail, after payment or tender to him of a reasonable sum for his expenses of attendance, to attend before the Board; or  
(b) fail, unless excused or released by the Chairman of the Board from continuing in attendance, to continue in attendance before the Board,

as required by the summons.

Penalty: \$1,000 or imprisonment for 6 months, or both.

20 (7) The regulations may make provision for and in relation to the payment of expenses to witnesses summoned to attend, or appearing, before a Disciplinary Appeal Board.

25 (8) In sub-sections (1), (3), (4), (5), (6) and (7), references to the Chairman of a Disciplinary Appeal Board, and other references to a Disciplinary Appeal Board, include references to a person appointed under sub-section (2) to take the evidence of another person in relation to an appeal to a Disciplinary Appeal Board.

**Long service leave entitlements of employees to whom By-law 70 was applicable**

30 **44.** Where—

- (a) the provisions of By-law No. 70 made under the *Australian National Railways Act 1917* on 24 June 1936 applied, immediately before 1 March 1978, in relation to an employee; and  
35 (b) the employee had been employed under that Act immediately before 7 October 1944,

the provisions of the By-law apply to and in relation to the employee as if it had not been repealed.

**Division 3—Special provisions relating to transferred South Australian and  
Tasmanian employees**

**Superannuation**

**45. (1)** Where a transferred South Australian employee or a transferred Tasmanian employee continues, notwithstanding his appointment to the Railway Service, to be a contributor for State retirement benefits— 5

- (a) the Commission may deduct from the salary or wages of the employee amounts equal to the contributions payable by him from time to time for those benefits and may pay the amounts so deducted to the appropriate Superannuation Board; and 10
- (b) the Commission may furnish to the appropriate Superannuation Board such information concerning the employee as the Board requests, being information relevant to the calculation of the contributions payable by him for those benefits or to the calculation of the State retirement benefits for which he has contributed. 15

**(2)** Where a transferred Tasmanian employee continues, notwithstanding his appointment to the Railway Service, to be a public servant for the purposes of the *Public Servants' Retiring and Death Allowances Act* 1925 of the State of Tasmania, the Commission may furnish to the Treasurer of that State such information concerning the employee as the Treasurer requests, being information relevant to the calculation of the benefits payable to or in respect of the employee under that Act. 20

**(3)** There shall be paid by the Commission to the Consolidated Revenue Fund, at such times as the Minister for Finance determines, in respect of transferred South Australian employees and transferred Tasmanian employees referred to in sub-section (1) and transferred Tasmanian employees referred to in sub-section (2), such amounts as the Minister for Finance determines in respect of the future liability of the Commonwealth to make payments relating to State retirement benefits in respect of those employees. 25

**(4)** In this section— 30  
“appropriate Superannuation Board” means—

- (a) in relation to a transferred South Australian employee—the South Australian Superannuation Fund Board continued in existence, under the name “South Australian Superannuation Board”, by section 18 of the *Superannuation Act* 1974 of the State of South Australia; 35
- (b) in relation to a transferred Tasmanian employee who was, immediately before his appointment to the Railway Service, a contributor under the *Superannuation Act* 1938 of the State of Tasmania—the Superannuation Fund Board established by that Act; and 40
- (c) in relation to a transferred Tasmanian employee who was, immediately before his appointment to the Railway Service, a contributor under the *Retirement Benefits Act* 1970 of the

State of Tasmania—the Retirement Benefits Fund Board established by that Act;

“State retirement benefits” means—

- (a) in relation to a transferred South Australian employee—benefits payable to or in respect of him under the *Superannuation Act 1974* of the State of South Australia; and
- (b) in relation to a transferred Tasmanian employee—benefits payable to or in respect of him under the *Superannuation Act 1938*, the *Retirement Benefits Act 1970* or the *Public Servants’ Retiring and Death Allowances Act 1925* of the State of Tasmania.

(5) A reference in this section to an Act of a State is a reference to the Act as amended and in force from time to time.

**Long service leave entitlements of transferred South Australian employees**

46. (1) Subject to sub-section (2), the eligibility of a transferred South Australian employee to be granted a period of long service leave, or of such an employee, or of the dependants of such an employee, to be paid an amount of money in lieu of long service leave, shall be determined—

- (a) by applying the provisions of the *Long Service Leave (Commonwealth Employees) Act 1976*; or
- (b) by applying the relevant South Australian long service leave provisions and treating the service of the transferred South Australian employee in the employment of the Commission as service as an Officer for the purposes of those provisions,

whichever has the more favourable effect in relation to that employee or his dependants, and a period of long service leave may be granted, or the payment of an amount of money in lieu of long service leave may be authorized, under the *Long Service Leave (Commonwealth Employees) Act 1976*, accordingly.

(2) For the purposes of sub-section (1), the period of long service leave that a transferred South Australian employee would, at any time, but for this sub-section, be eligible to be granted under the relevant South Australian long service leave provisions in respect of a period of service is subject to an appropriate reduction in respect of a period of long service leave that has previously been granted to him, or of any amount of money in lieu of long service leave that has previously been paid to him, in respect of any part of that period of service.

(3) For the purposes of applying the relevant South Australian long service leave provisions to or in respect of a transferred South Australian employee, the Public Service Board and any persons authorized to grant long service leave to that employee, or to authorize a payment of money in lieu of long service leave to or in respect of that employee, under the *Long Service Leave (Commonwealth Employees) Act 1976*, have all the powers conferred by those provisions upon the Public Service Board of the State of South Australia.

(4) A reference in this section to the relevant South Australian long service leave provisions is a reference to those provisions of the *Public Service Act 1967* of the State of South Australia as in force at 1 March 1978 that relate to long service leave.

**Compensation payable to certain transferred South Australian employees**

5

47. (1) If, when a claim for compensation in relation to an injury sustained on or after 1 March 1978 by a transferred South Australian employee is served on the Commissioner by or on behalf of a person under section 54 of the *Compensation (Commonwealth Government Employees) Act 1971*, there is also served on the Commissioner an election, in accordance with a form prescribed by regulations made under that Act, by or on behalf of the person to have the claim dealt with in accordance with the applied South Australian provisions, that Act applies to and in relation to the claim, subject to this section, as if the applied South Australian provisions were substituted for the provisions of Part III of that Act and section 98 of that Act were omitted.

10

15

(2) Where—

(a) a transferred South Australian employee sustains an injury (in this sub-section referred to as the “subsequent injury”) that relates to a previous injury sustained by him on or after 1 March 1978; and

(b) compensation was paid under the *Compensation (Commonwealth Government Employees) Act 1971* in respect of that previous injury,

that Act applies to and in relation to any claim made by or on behalf of the employee in respect of the subsequent injury—

20

(c) if an election was made under sub-section (1) in relation to that previous injury (whether or not an election is made in relation to the subsequent injury)—as if the applied South Australian provisions were substituted for Part III of that Act and section 98 of that Act were omitted; or

25

(d) if no election was made under sub-section (1) in relation to the previous injury but an election is made under that sub-section in relation to the subsequent injury—as if that last-mentioned election were of no force or effect.

30

(3) For the purposes of sub-section (2), an injury shall be taken to relate to a previous injury if it is an injury by way of—

(a) the aggravation, acceleration, exacerbation, deterioration or recurrence of that previous injury; or

35

(b) the further aggravation, acceleration, exacerbation, deterioration or recurrence of an injury the aggravation, acceleration, exacerbation, deterioration or recurrence of which constituted that previous injury.

(4) In the application of the modified *Compensation (Commonwealth Government Employees) Act* to or in relation to a claim for compensation—

40

(a) unless the contrary intention appears, expressions used in a provision of that Act included in the applied South Australian provisions have, if they are also used in the corresponding provision of the *Workers*



Compensation Act the same respective meanings as they have in the last-mentioned Act;

- 5 (b) expressions used in the modified Compensation (Commonwealth Government Employees) Act (other than in that part of the modified Compensation (Commonwealth Government Employees) Act that comprises the applied South Australian provisions) that are also used in the applied South Australian provisions have the same respective meanings as they have in the applied South Australian provisions; and
- 10 (c) in that part of the modified Compensation (Commonwealth Government Employees) Act that comprises the applied South Australian provisions—
- (i) a reference to the Court shall be read as a reference to the Commissioner; and
- 15 (ii) a reference to a workman shall be read as a reference to a transferred South Australian employee.

(5) Where—

- (a) claims for compensation in respect of an injury to a transferred South Australian employee that resulted in his death have been served on the Commissioner by or on behalf of 2 or more persons; and
- 20 (b) an election has been made under sub-section (1) in relation to at least one of those claims and no election has been so made in relation to at least one of those claims,

then—

- 25 (c) a claim in relation to which no election has been so made shall be determined under the *Compensation (Commonwealth Government Employees) Act 1971* in its application to that claim as if—
- (i) no election had been so made in relation to any of the claims referred to in paragraph (a); and
- 30 (ii) any person who is a dependant of the employee for the purposes of the Workers Compensation Act were a dependant of the employee for the purposes of that first-mentioned Act in its application to that claim;
- (d) a claim in relation to which an election has been so made shall be determined under the *Compensation (Commonwealth Government Employees) Act 1971* in its application to that claim as if—
- 35 (i) elections had been so made in relation to all the claims referred to in paragraph (a); and
- (ii) any person who is a dependant of the employee for the purposes of the *Compensation (Commonwealth Government Employees) Act 1971* in its application to a claim in relation to which no election has been made under sub-section (1) were a dependant of the employee for the purposes of that Act in its application to that claim; and
- 40 (e) the Commissioner shall make, under the *Compensation (Commonwealth Government Employees) Act 1971* in its application
- 45

to the claims referred to in paragraph (a), one determination in respect of all those claims.

(6) It is the intention of the Parliament that the modified Compensation (Commonwealth Government Employees) Act shall be applied, except where the contrary intention appears in that Act, in such a manner as to impose on the Commission the same liability, as nearly as practicable, to pay compensation in respect of an injury sustained, on or after 1 March 1978, by a transferred South Australian employee (being an injury in relation to which a claim is required to be determined under the modified Compensation (Commonwealth Government Employees) Act) as is imposed by the Workers Compensation Act on an employer to whom that Act applies, in respect of a similar injury sustained in similar circumstances by a person who is, within the meaning of that Act, a workman employed by such an employer. 5 10

(7) The power to make regulations conferred by section 123 of the *Compensation (Commonwealth Government Employees) Act 1971* extends, by virtue of this sub-section, to the making of regulations for the purposes of this section. 15

(8) In this section—

“applied South Australian provisions” means the provisions of Parts II, IV and VIII of, and the Second Schedule to, the Workers Compensation Act, and of any regulations and Proclamations in force from time to time for the purposes of those Parts and that Schedule, as modified by regulations made under the *Compensation (Commonwealth Government Employees) Act 1971* for the purpose of enabling matters connected with the payment of compensation in relation to transferred South Australian employees in accordance with those provisions to be dealt with under Parts I, II, IV and V, Part VI (except section 98) and Parts VII and IX of the *Compensation (Commonwealth Government Employees) Act 1971*; 20 25

“Commissioner” means the Commissioner for Employees’ Compensation under the *Compensation (Commonwealth Government Employees) Act 1971*; 30

“modified Compensation (Commonwealth Government Employees) Act” means the *Compensation (Commonwealth Government Employees) Act 1971* modified by the substitution of the applied South Australian provisions for Part III of that Act and by the omission of section 98 of that Act; 35

“Workers Compensation Act” means the *Workmen’s Compensation Act 1971* of the State of South Australia as amended and in force from time to time. 40

#### **Application of certain provisions of the *Compensation (Commonwealth Government Employees) Act 1971* to transferred employees**

48. (1) In the application of sub-section 45 (7) or 46 (3) of the *Compensation (Commonwealth Government Employees) Act 1971* to and in

relation to transferred South Australian employees and transferred Tasmanian employees, references to a superannuation or provident scheme established or maintained by the Commonwealth shall be read as including references to schemes for the payment of benefits contained in the *Superannuation Act 1974* of the State of South Australia and the *Superannuation Act 1938*, the *Retirement Benefits Act 1970* and the *Public Servants' Retiring and Death Allowances Act 1925* of the State of Tasmania.

(2) A reference in sub-section (1) to an Act of a State is a reference to that Act as amended and in force from time to time.

***Division 4—Powers and Functions of the Australian Conciliation and Arbitration Commission in respect of the Railway Service***

**Interpretation**

49. (1) In this Division, unless the contrary intention appears—

“industrial dispute in respect of the Railway Service” means a dispute (including a threatened, impending or probable dispute) as to an industrial matter in respect of the Railway Service, and includes—

- (a) a part of an industrial dispute in respect of the Railway Service;
- (b) an industrial dispute in respect of the Railway Service so far as it relates to a matter in dispute; or
- (c) a question arising in relation to an industrial dispute in respect of the Railway Service;

“industrial matter in respect of the Railway Service” means any matter in relation to the salaries, wages, rates of pay or other terms or conditions of service or employment of employees of the Commission;

“industrial question in respect of the Railway Service” means—

- (a) an industrial dispute in respect of the Railway Service; and
- (b) an industrial matter in respect of the Railway Service.

(2) Subject to sub-section (1), expressions used in this Division that are defined by section 4 of the *Conciliation and Arbitration Act 1904* have in this Division the same respective meanings as they have in that Act.

(3) Employees of the Commission shall be deemed to be employees in an industry within the meaning of the *Conciliation and Arbitration Act 1904*.

**Settlement of industrial disputes and determination of industrial matters in respect of the Railway Service**

50. (1) The Australian Conciliation and Arbitration Commission is empowered—

- (a) to prevent or settle, by conciliation or arbitration, industrial disputes in respect of the Railway Service; and
- (b) to hear and determine industrial questions in respect of the Railway Service submitted to it.

(2) In relation to an industrial question in respect of the Railway Service, the Australian Conciliation and Arbitration Commission may, where it thinks it proper to do so, make an award that, in the opinion of the Australian Conciliation and Arbitration Commission, is not, or may not be, in accordance with this Part or with any other law of the Commonwealth relating to salaries, wages, rates of pay or terms and conditions of service or employment of employees of the Australian National Railways Commission, not being— 5

- (a) the *Compensation (Commonwealth Government Employees) Act 1971*, *Long Service Leave (Commonwealth Employees) Act 1976* or the *Superannuation Act 1976*; or 10
- (b) any other Act that is, or the provisions of any other Act that are, prescribed by the regulations for the purposes of this paragraph.

#### **Application of provisions of the *Conciliation and Arbitration Act 1904***

51. (1) Subject to this Division, Division 1 of Part III of the *Conciliation and Arbitration Act 1904* extends to and in relation to the powers and functions of the Australian Conciliation and Arbitration Commission under this Division, to and in relation to proceedings under this Division and to and in relation to awards made under this Division. 15

(2) In the application of Division 1 of Part III of the *Conciliation and Arbitration Act 1904* in accordance with sub-section (1)— 20

- (a) references to industrial disputes shall be read as references to industrial questions in respect of the Railway Service;
- (b) references to the parties to an industrial dispute shall be read, in relation to the powers of the Australian Conciliation and Arbitration Commission under paragraph 50 (1) (b) of this Act, as references to the employees to whose employment the industrial dispute or industrial matter relates, the Australian National Railways Commission and the organizations of which any such employees are members; and 25
- (c) references to arbitration shall be read as including references to the hearing and determination of industrial matters in respect of the Railway Service. 30

#### **Awards deemed to be made under the *Conciliation and Arbitration Act 1904***

52. An award made under this Division shall, for the purposes of the *Conciliation and Arbitration Act 1904*, be deemed to have been made under that Act. 35

#### ***Public Service Arbitration Act 1920* not to apply**

53. The *Public Service Arbitration Act 1920* does not apply in relation to the employment of the employees of the Commission.

**PART V—FINANCE**

**Capital of Commission**

**54. (1)** The capital of the Commission at any time is the aggregate of—

(a) \$323,231,000;

(b) the value, at the date of becoming vested in the Commission, of rights, property or assets that become vested in the Commission, being that value as determined by the Minister for Finance, or so much of that value as is determined by the Minister for Finance; and

(c) amounts paid to the Commission by the Minister for Finance out of moneys appropriated by the Parliament for the purpose of providing further capital for the Commission,

less the aggregate of—

(d) amounts paid by the Commission for rights, property and assets of a kind referred to in paragraph (b); and

(e) amounts of capital repaid to the Commonwealth by the Commission.

(2) If, by virtue of a determination under paragraph (1) (b), part of the value of rights, property or assets of a kind referred to in that paragraph does not constitute part of the capital of the Commission, that part of the value shall be deemed to be a loan by the Commonwealth to the Commission on such terms and conditions as to interest and otherwise as are determined by the Minister for Finance.

(3) Interest is not payable to the Commonwealth on the capital of the Commission, but the capital of the Commission is repayable to the Commonwealth at such times, and in such amounts, as the Minister determines.

(4) In making a determination under sub-section (3), the Minister shall have regard to any advice that the Commission has given to him in relation to its financial affairs.

(5) A determination under this section shall be made by instrument in writing.

**Financial policy**

**55. (1)** The Commission shall, not later than 60 days before the commencement of each financial year—

(a) determine, by instrument in writing, that the financial target of the Commission for the financial year is to be—

(i) a specified profit;

(ii) neither a profit nor a loss; or

(iii) a specified loss; and

(b) inform the Minister, by notice in writing, of the financial target that it has determined for the financial year.

(2) The Minister may, before the expiration of the period of 60 days after receipt by him of notice under sub-section (1) of the financial target that the Commission has determined for the financial year—

- (a) determine, by instrument in writing, a different financial target for the financial year; and 5
- (b) inform the Commission, by notice in writing, of the financial target that he has determined for the financial year and the reasons for his determination.

(3) Subject to sub-section 19 (3), the Commission shall pursue a policy in the financial year directed at ensuring that it attains the financial target for the financial year. 10

(4) Subject to sub-section (6), the Commission shall, whenever it considers it necessary or desirable to do so during the financial year, review the financial results of its operations during the part of the financial year that has elapsed and, if on any such review it appears to the Commission that its progress towards attaining the financial target for the financial year has not been satisfactory, the Commission shall, subject to sub-section (5)— 15

- (a) forthwith consider what specific measures should be adopted by it in order to ensure that it attains the financial target; and
- (b) inform the Minister, by notice in writing, of the respects in which its progress towards attaining the financial target has not been satisfactory, of the measures that it proposes to adopt in order to ensure that it attains the financial target and of the effect that, in its opinion, the adoption of those measures will have on the financial results of its operations for the financial year. 20 25

(5) The Commission shall not, for the purposes of sub-section (4), propose that the financial target for the financial year should be attained, in whole or in part, by means of moneys appropriated by the Parliament.

(6) The Commission shall ensure that not more than 6 months elapse between— 30

- (a) the commencement of the financial year and the commencement of the first review under sub-section (4) in relation to the financial year; or
- (b) the commencement of a review under sub-section (4) in relation to the financial year and the commencement of the next such review. 35

(7) A reference in sub-section (3), (4) or (5) of this section or in sub-section 56 (1) to the financial target of the Commission for a financial year is a reference to—

- (a) the financial target determined by the Commission under sub-section (1) for the financial year; or 40
- (b) where the Minister has, under sub-section (2), determined a different financial target for the financial year—the financial target so determined.

**Measures to be taken where financial target not attained, &c.**

**56. (1)** Where the Commission does not attain, or is of the opinion that it cannot attain, its financial target for a financial year, the Commission shall, subject to sub-section (2)—

- 5 (a) forthwith consider what specific measures should be adopted by it in order to meet the amount of the shortfall or expected shortfall, as the case may be, in its financial target for the financial year (in this section referred to as the “financial target shortfall”); and
- 10 (b) not later than 60 days after the end of the financial year or its forming that opinion, as the case may be, inform the Minister, by notice in writing, of the measures that it proposes to adopt in order to meet the financial target shortfall.

15 (2) The Commission shall not propose that the financial target shortfall should be met, in whole or in part, out of moneys appropriated by the Parliament.

**Payment of dividend to Commonwealth**

**57. (1)** Before the expiration of the period of 4 months after the end of each financial year, the Commission shall, by notice in writing to the Minister, recommend—

- 20 (a) that the Commission pay a dividend, of a specified amount, to the Commonwealth for the financial year; or
- (b) that the Commission not pay a dividend to the Commonwealth for the financial year.

25 (2) In making its recommendation under sub-section (1), the Commission shall have regard to—

- (a) the need to ensure that the Commonwealth receives a reasonable return on the capital of the Commission that was employed in the Commission’s operations in the financial year; and
- (b) such other commercial matters as the Commission considers relevant.

30 (3) Before the expiration of the period of 60 days after receipt by him of notice under sub-section (1) of the recommendation made by the Commission under that sub-section in relation to the financial year, the Minister shall, by notice in writing to the Commission—

- 35 (a) where the recommendation is that the Commission pay a dividend to the Commonwealth for the financial year—
- (i) approve the recommendation; or
- (ii) direct the Commission to pay a dividend, of a different specified amount, to the Commonwealth for the financial year; or
- 40 (b) where the recommendation is that the Commission not pay a dividend to the Commonwealth for the financial year—
- (i) approve the recommendation; or

- (ii) direct the Commission to pay a dividend, of a specified amount, to the Commonwealth for the financial year.

(4) Where the Minister gives the Commission a direction under sub-paragraph (3) (a) (ii) or (b) (ii), he shall inform the Commission, by notice in writing, of the reasons for the direction.

5

(5) Where—

- (a) the Minister, under sub-paragraph (3) (a) (i), approves a recommendation that the Commission pay a dividend, of a specified amount, to the Commonwealth for the financial year; or

- (b) the Minister, under sub-paragraph (3) (a) (ii) or (b) (ii), directs the Commission to pay a dividend, of a specified amount, to the Commonwealth for the financial year,

10

the Commission shall, before the expiration of the period of 8 months after the end of the financial year or within such further time as the Minister allows by instrument in writing, pay a dividend, of the specified amount, to the Commonwealth.

15

(6) A payment by the Commission of a dividend to the Commonwealth may be made—

- (a) out of the profits of the Commission for the financial year to which the dividend relates;

20

- (b) out of the profits of the Commission for any preceding financial year; or

- (c) partly out of the profits of the Commission for the financial year to which the dividend relates and partly out of the profits of the Commission for any preceding financial year.

25

### **Profits of Commission**

58. (1) For the purposes of this Act, the profits of the Commission for a financial year are the amount (if any) remaining after deducting from the revenue received or receivable in respect of the financial year the expenditure and provision for expenditure properly chargeable against that revenue.

30

(2) The profits of the Commission for a financial year shall be applied in the first place in payment of the dividend (if any) payable under section 57 for the financial year, and the balance (if any) shall be applied in such manner as the Commission thinks fit.

### **Estimates**

35

59. (1) The Commission shall—

- (a) prepare estimates, in such form as the Minister directs, of its receipts and expenditure for each financial year and, if the Minister so directs, for any other period; and



- (b) submit those estimates to the Minister not later than—
  - (i) in the case of estimates of its receipts and expenditure for a financial year—60 days before the commencement of the financial year; or
  - (ii) in any other case—such date as the Minister directs.

(2) A direction under sub-section (1) shall be given by instrument in writing.

### **Application of moneys**

**60.** The moneys of the Commission shall be applied only—

- (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Commission in the performance of its functions and duties and the exercise of its powers;
- (b) in payment of the remuneration and allowances payable to persons appointed under Part III;
- (c) in making payments to the Commonwealth as provided by this Act; and
- (d) in making investments that the Commission is authorized to make under section 63E of the *Avait Act 1901* (as that section applies in relation to the Commission by virtue of sub-section 66 (1) of this Act).

### **Borrowings from Commonwealth**

**61.** The Minister for Finance may, on behalf of the Commonwealth, out of moneys appropriated by the Parliament for the purpose, lend moneys to the Commission on such terms and conditions as the Minister for Finance determines by instrument in writing.

### **Borrowings otherwise than from Commonwealth**

**62. (1)** The Commission may, with the approval of the Treasurer—

- (a) borrow moneys otherwise than from the Commonwealth; or
- (b) raise moneys otherwise than by borrowing,

on such terms and conditions as are specified in the approval.

(2) Without limiting the generality of sub-section (1), the Commission may, under that sub-section, borrow moneys, or raise moneys otherwise than by borrowing, by dealing with securities.

(3) A borrowing of moneys, or a raising of moneys otherwise than by borrowing, under sub-section (1) may be made, in whole or part, in a currency other than Australian currency.

(4) An approval may be given under sub-section (1) in relation to a particular transaction or in relation to transactions included in a class of transactions.

(5) An approval under sub-section (1) shall be given by instrument in writing.

(6) For the purposes of this section—

(a) the issue by the Commission of an instrument acknowledging a debt in consideration of—

(i) the payment or deposit of moneys; or

(ii) the provision of credit,

otherwise than in relation to a transaction that is in the ordinary course of the day to day operations of the Commission shall be deemed to be a raising by the Commission, otherwise than by borrowing, of an amount of moneys equal to the amount of the moneys paid or deposited or the value of the credit provided, as the case may be; and

(b) the obtaining of credit by the Commission otherwise than in relation to a transaction that is in the ordinary course of the day to day operations of the Commission shall be deemed to be a raising by the Commission, otherwise than by borrowing, of an amount of moneys equal to the value of the credit so obtained.

### **Guarantees**

**63. (1)** The Treasurer may, on behalf of the Commonwealth, enter into a contract—

(a) guaranteeing the repayment by the Commission of moneys borrowed by virtue of paragraph 62 (1) (a) and the payment by the Commission of interest on moneys so borrowed; or

(b) guaranteeing the payment by the Commission of such moneys (including any interest) that the Commission is liable to pay with respect to moneys raised by virtue of paragraph 62 (1) (b) as are specified in the contract.

**(2)** The Treasurer may, by instrument in writing, determine—

(a) that the repayment by the Commission of moneys borrowed by virtue of paragraph 62 (1) (a), and the payment by the Commission of interest on moneys so borrowed, are guaranteed by the Commonwealth; or

(b) that the payment by the Commission of such moneys (including interest) that the Commission is liable to pay with respect to moneys raised by virtue of paragraph 62 (1) (b) as are specified in the determination is guaranteed by the Commonwealth,

and, where the Treasurer so determines, the repayment of those moneys and the payment of that interest are, or the payment of those moneys is, by the force of this sub-section, guaranteed by the Commonwealth.

**(3)** A contract may be entered into by virtue of sub-section (1), and a determination may be made by virtue of sub-section (2), in relation to a particular transaction or in relation to transactions included in a class of transactions.

- (4) A contract entered into by virtue of sub-section (1) may include—
- (a) a provision agreeing, on behalf of the Commonwealth, that proceedings under the contract may be taken in the courts, or a specified court, of a country other than Australia; or
  - 5 (b) a provision waiving, on behalf of the Commonwealth, the immunity of the Commonwealth from suit in the courts, or a specified court, of a country other than Australia in relation to any proceedings that may be taken under the contract.

**Commission may give security**

- 10 **64.** The Commission may give security over the whole or any part of its assets for—
- (a) the repayment by the Commission of moneys borrowed by virtue of section 61 or paragraph 62 (1) (a) and the payment by the Commission of interest on moneys so borrowed;
  - 15 (b) the payment by the Commission of moneys (including any interest) that the Commission is liable to pay with respect to moneys raised by virtue of paragraph 62 (1) (b); or
  - (c) the payment to the Commonwealth of amounts equal to any amounts that the Commonwealth may become liable to pay under a contract
  - 20 entered into by virtue of sub-section 63 (1) or a determination made by virtue of sub-section 63 (2).

**Borrowings not otherwise permitted**

**65.** The Commission shall not borrow moneys, or raise moneys otherwise than by borrowing, except in accordance with sections 61 and 62.

25 **Application of Division 2 of Part XI of the *Audit Act 1901***

**66. (1)** It is hereby declared that the Commission is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

(2) For the purposes of the application in relation to the Commission of Division 2 of Part XI of the *Audit Act 1901* by virtue of sub-section (1), a reference in that Division to the appropriate Minister shall be read as a reference to the Minister of State administering this Act.

30

(3) The Commission shall, in each report prepared in pursuance of section 63H of the *Audit Act 1901* (as that section applies in relation to the Commission by virtue of sub-section (1))—

- 35 (a) include particulars of each direction given to it by the Minister under sub-section 8 (5) or 19 (2) that is applicable to the financial year to which the report relates;
- (b) deal specifically with the effect on the operations of the Commission of each such direction under sub-section 19 (2);
- 40 (c) specify the financial target determined by the Commission under sub-section 55 (1) for the financial year; and

- (d) where the Minister has, under sub-section 55 (2), determined a different financial target for the financial year—specify the financial target determined by the Minister for the financial year and set out the reasons given to it by the Minister for his determination.

(4) The Commission shall, in the financial statements prepared in respect of each financial year in pursuance of section 63H of the *Audit Act 1901* (as that section applies in relation to the Commission by virtue of sub-section (1)), show separately the financial effect on the operations of the Commission of each direction given to it by the Minister under sub-section 19 (2) that is applicable to the financial year to which the financial statements relate. 5  
10

### Liability to taxation

67. (1) Subject to sub-section (4), the Commission is not subject to taxation under the laws of the Commonwealth or of a State or Territory.

(2) Where the Treasurer so determines by notice published in the *Gazette*, stamp duty, or any similar tax, is not payable by the Commission or any other person under a law of the Commonwealth or of a State or Territory in respect of— 15

- (a) a security dealt with by the Commission;
- (b) the issue, redemption, transfer, sale, purchase, resale, acquisition or discounting of such security by the Commission or any other person, not including a transaction done without consideration or for an inadequate consideration; 20
- (c) any other transaction done for the purposes of a borrowing, or a raising of moneys otherwise than by borrowing, by the Commission; or
- (d) any other document executed by or on behalf of the Commission for the purposes of a borrowing, or a raising of moneys otherwise than by borrowing, by the Commission. 25

(3) A determination may be made under sub-section (2) in relation to—

- (a) a particular security, transaction or document; or
- (b) securities, transactions or documents included in a class of securities, transactions or documents, as the case may be. 30

(4) Subject to sub-section (2), the regulations may provide that sub-section (1) does not apply in relation to a specified law of the Commonwealth or of a State or Territory or laws included in a class of laws of the Commonwealth or of a State or Territory. 35

(5) If regulations made by virtue of sub-section (4) provide that sub-section (1) does not apply in relation to the laws of the Commonwealth that impose income tax, the Commission shall be deemed not to be a public authority for the purposes of paragraph 23 (d) of the *Income Tax Assessment Act 1936*. 40

(6) If regulations made by virtue of sub-section (4) provide that sub-section (1) does not apply in relation to the laws of the Commonwealth

that impose sales tax, the Commission shall be deemed not to be a public transport authority for the purposes of item 77 in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*.

## PART VI—MISCELLANEOUS

### 5 **Closing of railways**

68. (1) The Minister may, on the recommendation of the Commission, authorize the Commission to close any railway operated by the Commission.

(2) The Minister shall cause a copy of each authorization given under sub-section (1) to be published in the *Gazette*.

### 10 **Reports of accidents, &c., to be supplied to Minister**

69. (1) Where—

(a) an accident—

(i) resulting in loss of human life or serious injury to any person; or

(ii) involving a train carrying passengers; or

15 (b) any other serious incident,

occurs on a railway operated by the Commission, the Commission shall forthwith furnish to the Minister a report, in writing, of the circumstances of the accident or incident, as the case may be.

20 (2) The Commission shall, as soon as practicable after the expiration of the period of 6 months ending on 30 June, and of the period of 6 months ending on 31 December, in each year, furnish to the Minister a report, in writing, with respect to accidents that have occurred, during the period, on railways operated by it.

25 (3) A report under sub-section (2) shall be in such form as the Minister directs by instrument in writing.

### **Inquiries into accidents, &c.**

70. (1) Where—

(a) an accident—

(i) resulting in loss of human life or serious injury to any person; or

30 (ii) involving a train carrying passengers; or

(b) any other serious incident,

occurs on a railway operated by the Commission, the Minister may, by instrument in writing, establish a Board of Inquiry to inquire into, and report to him on, the circumstances of the accident or incident, as the case may be.

35 (2) A Board of Inquiry shall be constituted in such manner as is specified in the instrument by which it is established.

(3) The provisions of the *Royal Commissions Act 1902* apply, with such modifications (if any) as are prescribed by the regulations, to and in relation to

a Board of Inquiry as if it were a Royal Commission within the meaning of that Act.

### **Reports to Minister**

**71.** The Commission shall—

- (a) from time to time inform the Minister concerning the general conduct of its operations; and 5
- (b) furnish to the Minister such information in relation to its operations as the Minister requires.

### **Commission not common carrier**

**72.** The Commission is not a common carrier. 10

### **Service of notices**

**73. (1)** Subject to this section, a notice required under this Act to be given to a person shall be served either personally or by post on the person.

**(2)** A notice under this Act that is posted, as a letter, to a person at the last address of the person known to the Commission shall, for the purposes of the application of section 29 of the *Acts Interpretation Act 1901* in relation to sub-section (1), be deemed to be properly addressed to the person. 15

**(3)** Where—

- (a) the Commission is unable, after diligent inquiry, to ascertain the identity of the owner of any land; or 20
- (b) service of a notice under this Act on the owner of any land cannot be effected either personally or by post,

service of the notice may be effected by causing a copy of the notice to be published in a newspaper circulating in the district in which the land, or part of the land, is situated and— 25

- (c) if the land is occupied—giving a copy of the notice to the occupier; or
- (d) if the land is not occupied—affixing, if practicable, a copy of the notice to a conspicuous part of the land.

**(4)** Where the Commission is unable, after diligent inquiry, to ascertain—

- (a) whether any land is occupied; or 30
- (b) the identity of the person occupying any land,

it may treat the land as being unoccupied.

**(5)** Where service of a notice under this Act on the occupier of any land cannot be effected either personally or by post, service of the notice may be effected by— 35

- (a) causing a copy of the notice to be published in a newspaper circulating in the district in which the land, or part of the land, is situated; and
- (b) affixing, if practicable, a copy of the notice to a conspicuous part of the land.

**Railways need not be fenced**

74. Notwithstanding any law of a State or Territory to the contrary, the Commission is not required to fence, or to maintain any fence erected in connection with, any railway operated by it.

5 **Act subject to Railways Agreement Acts**

75. This Act has effect subject to the *Railways Agreement (South Australia) Act 1975* and the *Railways (Tasmania) Act 1975*.

**Closing of roads**

10 76. (1) Where the Commission proposes to close a road (otherwise than temporarily for purposes connected with the construction, maintenance, alteration or repair of a railway), it shall—

(a) give notice, in writing, to the authority having the care and management of the road that—

15 (i) it proposes to close the road; and  
 (ii) the authority may, not later than 30 days after service of the notice on it, lodge with the Commission an objection, in writing, to the closure of the road; and

(b) publish in a newspaper circulating in the district in which the road is situated notice that—

20 (i) it proposes to close the road; and  
 (ii) any interested person may, not later than 30 days after the publication of the notice, lodge with the Commission an objection, in writing, to the closure of the road.

25 (2) Where the Commission is satisfied, after considering any objections to the closure of the road lodged with it in pursuance of sub-section (1), that it is necessary or desirable to do so, it may declare, by instrument in writing, that the road is closed from a specified time.

(3) Where, under sub-section (2), the Commission declares that a road is closed from a specified time, it shall—

30 (a) give notice, in writing, to the authority having the care and management of the road, and each interested person who lodged an objection in pursuance of sub-section (1) to the closure of the road, that the road is closed from that time; and

35 (b) publish in a newspaper circulating in the locality in which the road is situated notice that the road is closed from that time.

40 (4) A notice under sub-section (3) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision of the Commission by or on behalf of any person or persons whose interests are affected by the decision.

(5) A failure to comply with sub-section (4) in relation to a decision of the Commission under sub-section (2) does not affect the validity of the decision.

(6) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Commission under sub-section (2).

(7) A reference in this section to a road includes a reference to a part of a road.

**Compensation for acquisition of property**

5

77. (1) Where, but for this section, the operation of sub-section 14 (3) or section 76 would result in the acquisition of property from a person otherwise than on just terms, the Commission is liable to pay to the person such compensation as is agreed upon between them or, in the absence of agreement, such compensation as is determined by the Supreme Court of a State or Territory in an action brought by the person against the Commission.

10

(2) The Supreme Courts of the States have jurisdiction, and the Supreme Courts of the Territories have jurisdiction to the extent that the Constitution permits, with respect to matters arising under sub-section (1) in respect of which actions may be brought in those Courts under that sub-section.

15

(3) In sub-section (1), "acquisition of property" and "just terms" have the same respective meanings as in paragraph 51 (xxxi) of the Constitution.

**Endangering safety of trains, &c.**

78. (1) A person shall not do any act or thing that, to his knowledge, is likely to endanger the safety of—

20

- (a) a train operated by the Commission;
- (b) a railway, or any part of a railway, operated by the Commission; or
- (c) any persons who are, or may be, within the limits of a railway operated by the Commission.

Penalty: \$20,000 or imprisonment for 10 years, or both.

25

(2) An offence against sub-section (1) is an indictable offence.

(3) Notwithstanding that an offence against sub-section (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

30

(4) Where, in accordance with sub-section (3), a court of summary jurisdiction convicts a person of an offence against sub-section (1), the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both.

(5) This section shall be read and construed as being in addition to, and not in derogation of or in substitution for, any other law of the Commonwealth or any law of a State or Territory.

35

(6) Without limiting the generality of paragraph (1) (c), all land, and all buildings and other structures, owned or occupied by the Commission, and used in connection with a railway operated by the Commission, shall, for the purpose of that paragraph, be taken to be within the limits of that railway.

40



**By-laws**

79. (1) The Commission may make by-laws, not inconsistent with this Act or the regulations, prescribing matters—

- (a) required or permitted by this Act to be prescribed by the by-laws; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular, making provision for, or with respect to—

- (c) the terms and conditions governing the provision to, or use by, any person of services provided by, or facilities owned or operated by, the Commission;
- (d) the protection and preservation of property of, or property in the custody or under the control of, the Commission;
- (e) the maintenance of safety and order on railways and trains operated by the Commission;
- (f) the sale or other disposal of unclaimed goods in the possession of the Commission and the disposal of the proceeds of any such sale;
- (g) the prohibition of interference with—
  - (i) services provided by the Commission; and
  - (ii) property of, or property in the custody or under the control of, the Commission; and
- (h) prescribing penalties not exceeding a fine of \$500 for breaches of the by-laws.

(2) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to by-laws made under sub-section (1) as if, in those sections, references to regulations were references to such by-laws.

(3) By-laws made under sub-section (1) shall be deemed not to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply in relation to such by-laws in like manner as they apply in relation to statutory rules.

(4) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (3), the reference in that first-mentioned sub-section to the Minister of State for Administrative Services shall be read as a reference to the Minister of State administering this Act.

**Regulations**

80. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed by the regulations; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular, prescribing penalties not exceeding a fine of \$500 for offences against the regulations.











