

LEGISLATIVE ASSEMBLY

Read 1° 24 October 1979

Read 2° }
Committed } 20 March 1980

Reported 1 April 1980

(Brought in by Mr Maclellan and Mr Thompson)

A BILL

To amend the *Railways Act* 1958 and for other purposes.

(As reported from a Committee of the Whole House, 1 April 1980.)

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Railways (Amendment) Act* 1980. Short title.

10 (2) The several provisions of this Act shall come into operation on the day or on the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the *Government Gazette*. Commencement.

(3) In this Act the *Railways Act* 1958 is referred to as the Principal Act. Principal Act No. 6355.
Reprinted to No. 9142.
Subsequently amended by Nos. 9189 and 9212.

15 2. In section 13 of the Principal Act—
(a) for the words "who has committed any offence" there shall be substituted the words "whom he believes on reasonable grounds to have committed any offence"; and Amendment of No. 6355 s. 13
Arrest of transient offenders.

(b) for the words "may seize and detain" there shall be substituted the words "may without warrant seize and detain".

No. 6355. Insertion of s. 13A.

3. After section 13 of the Principal Act there shall be inserted the following section :

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Hindrance of railway officers.

"13A. Any person who assaults, resists, obstructs, hinders or delays or incites or encourages any other person to assault, resist, obstruct, hinder or delay any officer, employé or agent of the Victorian Railways Board in the execution of his duty under this Act or otherwise or any person lawfully assisting any such officer, employé or agent in the execution of his duty under this Act or otherwise be shall guilty of an offence.

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Penalty : \$300 or imprisonment for two months."

Substitution of No. 6355 s. 31.

4. For section 31 of the Principal Act there shall be substituted the following section :

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Travelling without valid ticket.

"31. (1) A person may make a journey in a carriage without a ticket valid for the journey if—

- (a) prior to commencing the journey he takes all reasonable steps to purchase such a ticket;
- (b) while making the journey he has no reasonable opportunity to purchase such a ticket; and
- (c) on completion of the journey he takes all reasonable steps to purchase such a ticket.

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(2) Subject to sub-section (1) a person who makes a journey in a carriage without having in his possession a ticket that is valid for that journey is liable to a penalty of not more than \$100.

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(3) A person who makes a journey in a carriage and, not being entitled to make the journey without a ticket, fails, upon request being made by an authorized person, to produce a ticket valid for the journey is liable to a penalty of not more than \$100.

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(4) A person who by fraudulent or collusive means or false representation—

- (a) obtains a ticket; or
- (b) claims or takes the benefit of an exemption or concessional deduction to which he is not entitled from the payment of a toll, fare or charge—

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is liable to a penalty of not more than \$250.

(5) In a prosecution of a person for an offence under sub-section (2) or (3), the onus of proving that the person had in his possession a ticket valid for a journey or, if the person claims that he was entitled to make the journey without a ticket valid for the journey, that he was so entitled shall be upon that person.

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(6) The

(6) The provisions of sub-sections (2) and (3) shall not apply in respect of anything done or omitted to be done in the course of his duties by a person employed by the Victorian Railways Board.

(7) In this section—

5 “Authorized person” means a person employed by the Victorian Railways Board who has duties in relation to the issue inspection or collection of tickets or platform tickets;

10 “Carriage” means any passenger vehicle operated by, on behalf of or under contract to the Victorian Railways Board; and

15 “Ticket” in relation to a journey means a ticket, pass, symbol or other evidence issued to a person by or on behalf of the Victorian Railways Board entitling that person to make that journey.”

5. The Principal Act shall be amended as follows:

No. 6355.
Insertion of
s. 31A.

(a) After section 31 there shall be inserted the following section:

20 “31A. (1) Where an authorized officer has reason to believe that a person has committed an offence referred to in the Third Schedule he may serve on that person a railways infringement notice under this section.

Railways
infringement
notices.

25 (2) For the purposes of this section “authorized officer” means an officer or employé of the Victorian Railways Board appointed in writing by the general manager either generally or in a particular case for the purposes of this section.

(3) A railways infringement notice may be served—

30 (a) by personally serving it upon the alleged offender; or

(b) by sending it by post addressed to him at his last known place of residence or business.

35 (4) Every railways infringement notice shall be in or to the effect of the prescribed form and shall have clearly shown thereon—

(a) a statement of the day, time and place of the alleged offence;

40 (b) a statement of the penalty fixed by this section for the offence;

(c) a statement of the place or places at which the penalty may be paid;

(d) the

- (d) the date of the notice and a statement that the penalty may be paid within a period of one month after that date;
- (e) a statement to the effect that if the penalty is paid at a place specified in the notice the matter will not be brought before a court unless, before the expiration of the period specified in the notice as the period within which payment may be made, notice is given that the railways infringement notice is withdrawn;
- (f) a summary of the provisions of this Act relating to the withdrawal of railways infringement notices; and
- (g) such other particulars and instructions as are required by this Act or prescribed by regulations made under this Act.

(5) A railways infringement notice may be withdrawn, whether the appropriate penalty has been paid or not, at any time within one month after the service of the railways infringement notice by—

- (a) serving personally upon the alleged offender; or
 (b) sending by post to the alleged offender at his last known place of residence or business—

a notice in the prescribed form signed by an authorized officer to the effect that the railways infringement notice is withdrawn.

(6) Where the amount of the penalty for the offence is paid before the railways infringement notice is withdrawn pursuant to sub-section (5), the amount so paid shall be refunded upon notice of the withdrawal being given.

(7) The penalty recoverable for an offence proceeded against under this section shall be \$25.

(8) Subject to sub-sections (5) and (10), if before the expiration of the period specified in the railways infringement notice as the period within which the penalty may be paid or, where the authorized officer giving the railways infringement notice so allows, at any time before service of a summons in respect of the offence the amount of the penalty fixed by this section is paid at the appropriate place—

- (a) the offender shall be deemed to have expiated the offence by payment of the penalty;

(b) no

(b) no further proceedings shall be taken in respect of the offence; and

(c) no conviction for the offence shall be regarded as having been recorded.

5 (9) Payment of any penalty under this section may be effected by cash, cheque or money order either lodged at or sent by post to the place referred to in the railways infringement notice, but in the case of a cheque payment shall be deemed not to be made unless and
10 until the cheque is honoured upon presentation.

(10) Where a railways infringement notice is served on a person under this section for an alleged offence and—

15 (a) the penalty payable under this section for the offence is not paid; or

(b) the railways infringement notice is withdrawn pursuant to sub-section (5)—

20 the person may, subject to sub-section (11), be proceeded against as if the railways infringement notice had never been served.

(11) Where—

(a) a railways infringement notice is served on a person under this section for an alleged offence and is not withdrawn;

25 (b) the penalty payable under this section for the offence is not paid; and

(c) the person is convicted of the offence by a court or magistrate—

the following provisions shall apply:

30 (d) the penalty for the offence shall be \$25;

(e) costs may be awarded against the person; and

35 (f) the conviction imposed by the magistrate or court shall be deemed not to be a conviction for any purpose (including, without limiting the generality of the foregoing, the purposes of any enactment imposing or authorizing or requiring the imposition of any disqualification or disability or higher penalty on convicted persons or persons convicted on more than one occasion) except in relation to—

40 (i) the making of the conviction itself; and

(ii) any

- (ii) any subsequent proceedings which may be taken in respect of the conviction itself, including proceedings by way of appeal or order to review.

(12) The Governor in Council may make regulations prescribing forms for the purposes of this section and generally for or with respect to anything authorized or required to be prescribed for the purposes of this section or necessary or convenient to be prescribed for the purposes of this section.”; and

- (b) After the Second Schedule there shall be inserted the following Schedule:

“THIRD SCHEDULE

Section 31A.

- Making journey in carriage without valid ticket (section 31 (2)).
 Failing to produce valid ticket upon request by authorized person (section 31 (3)).
 Any offence against section 21.
 Wilfully trespassing upon railway station pier land or premises (section 36).
 Without reasonable excuse entering or attempting to enter, joining or attempting to join or leaving or attempting to leave a vehicle while it is in motion (By-law No. 351, clause 21 (i)).
 Without reasonable excuse protruding any portion of his person from the open door or window of a vehicle which is in motion (By-law No. 351, clause 22).
 Crossing or attempting to cross a line of railway elsewhere than at a crossing place (By-law No. 351, clause 24 (a)).
 Crossing or attempting to cross a line of railways at a crossing place for pedestrians while a wig-wag, alternating red light or boom barrier is operating (By-law No. 351, clause 24 (c)).
 Placing feet upon seat (By-law No. 351, clause 47 (i)).”.

No. 6355.
 Insertion of
 subdivision 6A.

6. The Principal Act shall be amended as follows:

- (a) In the Table in section 1, under Part III., Division 4, after the expression “Subdivision 6.—Railways Accident and Fire Insurance Fund ss. 118–119” there shall be inserted the expression “Subdivision 6A.—Railways Offences Enforcement Fund s. 119A.”; and
- (b) After section 119 there shall be inserted the following subdivision:

‘Subdivision 6A.—Railways Offences Enforcement Fund

119A. (1) For the purposes of this section the Victorian Railways Board shall establish and maintain a fund called the “Railways Offences Enforcement Fund”.

(2) Notwithstanding the *Penalties Act* 1958, any money recovered by the Victorian Railways Board by way of fine or penalty for a breach of any provision of this Act or any by-law made under this Act or by way of

costs

Railways
 Offences
 Enforcement
 Fund.

costs in any civil or criminal proceedings to which the Board, or a person acting on behalf of the Board, is a party shall be paid into the Fund.

5 (3) The Fund shall be applied towards promoting observance of and enforcing the provisions of this Act and the by-laws made under this Act.

10 (4) An account of the moneys received by the Fund and expended for each of the purposes mentioned in sub-section (3) shall be included in the annual report of the Victorian Railways Board."

7. For section 141 of the Principal Act there shall be substituted the following section:

Substitution of
No. 6355 s. 141.

"141. (1) If any officer employé or agent of the Victorian Railways Board believes on reasonable grounds—

- 15 (a) that a person is committing an offence against this Act or any by-law made under this Act; and
- 20 (b) that the commission of the offence is or is likely to be attended with danger or annoyance to the public or hindrance to any of the officers, employés or agents of the Victorian Railways Board in lawful use of any of the railways or any pier, station, yard or building—

the officer, employés or agents of the Victorian Railways Board or any of them may, if the person is in or on any vehicle owned or operated by or on behalf of the Victorian Railways Board or any premises or property of the Victorian Railways Board, summarily
25 remove him therefrom or take such other action as is necessary to obviate or remove the danger, annoyance or hindrance.

30 (2) An officer, employé or agent of the Victorian Railways Board acting under the authority of sub-section (1) may, in order to remove a person from a vehicle or premises or property or to obviate or remove a danger, annoyance or hindrance, use such force as is reasonable in the circumstances.

(3) A person who—

- 35 (a) is removed from a vehicle or any premises or property under the authority of this section; or
- (b) is otherwise affected by any action taken under the authority of this section—

shall have no right of action whatsoever in law against the Victorian Railways Board or any of its officers, employés or agents arising out of that removal or action.

(4) A person

(4) A person who alleges that an officer, employé or agent of the Victorian Railways Board acting or purporting to act under the authority of sub-section (1) used more force than is permitted by sub-section (2) shall bear the onus of proving that more force than is permitted was used.

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(5) Any action taken under this section shall not prevent the institution of proceedings in respect of the offence.”.