

COMMONWEALTH RAILWAYS.

No. 31 of 1917.

An Act relating to the Construction and Management of Commonwealth Railways.

[Assented to 22nd September, 1917.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Commonwealth Railways Act* Short title.
1917.

2. This Act is divided into Parts, as follows:—

Parts.

Part I.—Preliminary.

Part II.—The Railways Commissioner.

Division 1.—Constitution, Appointment, and Tenure of Office.

Division 2.—Property.

Division 3.—Powers of the Commissioner.

Division 4.—Duties of the Commissioner.

Part III.—The Railway Service.

Part IV.—Funds.

Division 1.—Plant and Stores Suspense Account.

Division 2.—Railway Accident and Insurance Fund.

Part V.—Construction of new Railways.

Part VI.—Penalties and Procedure.

Part VII.—Miscellaneous.

Part VIII.—By-laws.

3.—(1.) The Acts mentioned in the Schedule to this Act are, Repeal.
to the extent therein expressed, hereby repealed.

(2.) All rules, regulations, by-laws and scales of charges made or continued under the authority of any Act repealed by this Act, which are in force at the commencement of this Act, shall be deemed to have been made under the authority of this Act.

(3.) Any purchase, sale, conveyance, grant, assurance, deed, security, contract, bond, or agreement entered into, made or given at any time prior to the commencement of this Act by or to the Minister of State for Home Affairs or the Minister of State for Existing securities not affected.

Works and Railways, under or for the purpose of any Act repealed by this Act, shall not be affected by this Act, except that the Commissioner shall be substituted therein for the Minister of State; and it shall be binding and of full force and effect in every respect against or in favour of the Commissioner, and may be enforced as fully and effectually, as if it had been entered into made or given by or to the Commissioner instead of the Minister of State.

Definitions.

4. In this Act, unless the contrary intention appears—

“Employee” means any person employed by the Commissioner under this Act;

“Goods” includes merchandise and chattels of every description, and animals alive or dead;

“Owner”, when used in respect of land, means any person who is entitled to sell and convey land; and when used in relation to goods includes any consignor, consignee, shipper or agent for sale or custody of the goods;

“Railway” means any railway vested in the Commissioner; and, where necessary, includes all lands, buildings, works, and things connected therewith or appurtenant thereto;

“Railway service” means employment under the Commissioner;

“The Commissioner” means the Commonwealth Railways Commissioner;

“The Minister” means the Minister of State administering this Act; and

“Wharf” means any wharf, jetty or pier connected with the railways.

PART II.—THE RAILWAYS COMMISSIONER.

*Division 1.—Constitution, Appointment, and Tenure of Office.*Incorporation
of the
Commissioner.

5.—(1.) There shall be a Commissioner, who shall be a body corporate by the name of the Commonwealth Railways Commissioner, and shall have perpetual succession and a common seal, and be capable of suing and being sued, and shall, subject to this Act have power to acquire, purchase, sell, lease, and hold lands, tenements, and hereditaments, goods, chattels and any other property for the purposes of and subject to this Act.

(2.) All courts, judges, and persons acting judicially shall take judicial notice of the seal of the Commissioner affixed to any document or notice, and shall presume that it was duly affixed.

Appointment of
Commissioner.

6. The Governor-General may appoint a fit and proper person to be Commissioner, and may, on the happening of any vacancy in the office of Commissioner, appoint a person to the vacant office.

Uncertificated
insolvent
not to be
Commissioner.

7. A person who is an uncertificated bankrupt or insolvent shall be incapable of being appointed Commissioner.

8.—(1.) Subject to this Act, a person who is appointed Commissioner shall hold office, during good behaviour, for the term for which he is appointed.

Tenure of Commissioner.

(2.) No person shall be appointed Commissioner for a term exceeding five years.

9. The Commissioner may from time to time be re-appointed for any further term not exceeding five years.

Commissioner eligible for re-appointment.

10. In the case of the illness, suspension or absence of the Commissioner, the Governor-General may appoint a person to act as the Deputy of the Commissioner during the illness, suspension or absence, and the deputy shall, whilst so acting, have all the powers and perform all the duties of the Commissioner.

Appointment of Deputy Commissioner.

11.—(1.) In the event of the office of Commissioner becoming vacant at any time, the Governor-General may appoint a person to be Acting Commissioner.

Power to appoint Acting Commissioner for period not exceeding six months.

(2.) The vacancy shall not be so filled for any term exceeding six months in the whole, and in making any appointment pursuant to this section the term for which the person is appointed shall be specified by the Governor-General.

(3.) An Acting Commissioner shall hold office, during good behaviour, for the term for which he is appointed.

(4.) An Acting Commissioner shall, during the term for which he is appointed, have all the powers and perform all the duties of the Commissioner.

(5.) An Acting Commissioner shall be liable to be suspended or removed from office by the Minister upon such grounds as the Commissioner is liable to be suspended or removed from office.

(6.) Where an Acting Commissioner has been suspended or removed from office by the Minister, a full statement of the cause of the suspension or removal shall be laid before both Houses of the Parliament within fourteen days after the suspension or removal, or, if the Parliament is not then sitting, within fourteen days after the next meeting of the Parliament.

12.—(1.) The Minister may remove any Commissioner from office on an address praying for his removal being presented to the Governor-General by the Senate and the House of Representatives respectively in the same Session of the Parliament.

Commissioner—how removed from office or suspended.

(2.) At any time when the Parliament is not sitting the Minister may suspend the Commissioner from office for inability, inefficiency, mismanagement or misbehaviour or refusal or neglect or failure to carry out any of the provisions of this Act.

(3.) A full statement of the cause of the suspension shall be laid before both Houses of the Parliament within fourteen days after the commencement of the next Session of the Parliament, and if within sixty days thereafter an address is presented to the Governor-General by the Senate and the House of Representatives praying for the restoration of the Commissioner to office the Commissioner shall be restored accordingly; but if no such address is

so presented the Governor-General may confirm the suspension and declare the office of the Commissioner to be vacant and the office shall thereupon become and be vacant.

Office of
Commissioner —
now vacated.

13.—(1.) The Commissioner, or the Acting Commissioner (if any), shall be deemed to have vacated his office if—

- (a) he engages, during his term of office, in any employment outside the duties of his office ; or
- (b) he becomes bankrupt or insolvent, or applies to take the benefit of any Act or State Act for the relief of bankrupt or insolvent debtors, or compounds with his creditors or makes an assignment of his salary for their benefit ; or
- (c) he is wilfully absent from duty for a period of fourteen consecutive days except on leave granted by the Governor-General (which leave he is hereby authorized to grant), or becomes incapable of performing his duties ; or
- (d) he becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Commissioner ; or in any way participates or claims to be entitled to participate in the profit thereof, or in any benefit or emolument arising therefrom.

(2.) If the Commissioner becomes in any way concerned or interested in any such contract or agreement or in any way participates or claims as aforesaid, he shall be guilty of an indictable offence.

Penalty : Five hundred pounds, or imprisonment for three years, or both.

Salary of
Commissioner.

14.—(1.) The Commissioner shall receive a salary not exceeding Two thousand pounds a year.

(2.) The Governor-General shall determine the rate of the Commissioner's salary before or at the time of his appointment.

(3.) The salary of the Commissioner shall be a charge upon, and payable out of, the Consolidated Revenue Fund, which is hereby appropriated accordingly.

Preservation of
rights of person
appointed
Commissioner.

15. If any person who is entitled under the laws of the Commonwealth to compensation, or retiring or superannuation allowance, or to long-service leave of absence, is appointed Commissioner, he shall, on retiring from or ceasing to hold the office of Commissioner, be entitled to such compensation, allowance, or leave of absence ; but it shall not be granted or computed in respect of any period during which he is Commissioner or on the rate of salary received by him as Commissioner.

Division 2.—Property.

Commonwealth
Railways, &c.,
vested in
Commissioner.

16. For the purposes of this Act there shall be vested absolutely in the Commissioner, and, in respect of land, for an estate in fee simple—

- (a) all railways and all rolling-stock heretofore constructed or acquired by or on behalf of the Commonwealth pursuant to any Act in force for the time being authorizing the construction or acquisition of railways or rolling-stock and all railways or rolling-stock hereafter to be so constructed or acquired ;

- (b) all wharves, stations, yards and buildings connected, or used in connexion, with such railways ;
- (c) all land the property of the Commonwealth over or upon which such wharves, stations, yards and buildings have been constructed or erected ;
- (d) all land acquired for or on behalf of the Commonwealth for railway purposes ; and
- (e) all wires, instruments and other telegraphic or telephonic apparatus (not being the property of the Postmaster-General) used in connexion with the railways.

17. No rates, tax, or assessment shall be made, charged or levied upon any railway or other property vested in the Commissioner, except as may be sanctioned by the Minister.

Railway property not subject to rates, &c.

18. All moneys appropriated by Parliament for the maintenance or management of the railways and for all purposes in connexion therewith shall be expended under the control and management of the Commissioner.

Expenditure of moneys appropriated by Parliament.

19. All moneys payable to the Commissioner under this or any other Act shall be collected and received by him on account of and shall be paid into the Consolidated Revenue Fund.

Receipts—how disposed of.

Division 3.—Powers of the Commissioner.

20.—(1.) The Commissioner may in relation to any particular matters or class of matters or to any particular part of the Commonwealth, by writing under his hand, delegate to any employee or other prescribed person all or any of his powers under this Act (except his power of delegation), so that the delegated powers may be exercised by him with respect to the matters or class of matters or the part of the Commonwealth specified in the instrument of delegation.

Delegation of powers by Commissioner

(2.) Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power by the Commissioner.

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

Lease of railway property.

(2.) Every such lease shall be granted for such period, and on such terms and conditions, as the Minister approves.

(3.) The Commissioner may lease any refreshment room, tenement (other than for trading purposes), or site for storage, or grant the right of entrance into any station by any public vehicle, or the right of advertising, or other convenience or appurtenance to any of the railways, for any term not exceeding five years, upon such terms and conditions as he determines, and may provide house accommodation for employees on such terms and conditions as he determines.

General
contractual
powers of
Commissioner.

22.—(1.) Subject to this Act, the Commissioner in his corporate name may contract—

- (a) for the execution of any work authorized by this or any other Act to be executed by him ; or
- (b) for furnishing materials or labour ; or
- (c) for providing locomotive engines or other motive or tractive power ; or
- (d) for any other matter or thing whatsoever necessary for enabling him to carry the purposes of the Act into full effect ;

in such manner, upon such terms, for such sums, and under such stipulations, conditions, and restrictions as the Commissioner thinks proper.

(2.) Every such contract shall be in writing and shall specify—

- (a) the work to be done ;
- (b) the materials to be furnished ;
- (c) the price to be paid therefor ;
- (d) the time within which the work is to be completed and the materials are to be furnished ; and
- (e) the penalties to be suffered in case of non-performance thereof.

(3.) Every such contract may, if the Commissioner thinks fit, comprise several works, and may in every case specify the person to whose satisfaction the work is to be completed or the material furnished, and the mode of determining any dispute which may arise in relation to the contract.

Certain
contracts not
to be entered
into without
Minister's
consent.

23. The Commissioner shall not, without the consent of the Minister, enter into any contract in any case where—

- (a) the contract is for the supply, either directly or indirectly, from places outside the Commonwealth, of materials of a greater value than One thousand pounds, or of locomotive engines, or other rolling-stock, or motive or tractive power ; or
- (b) the contract exceeds the sum of Five thousand pounds.

Contracts by the
Commissioner—
how made.

24.—(1.) Any contract which, if made between private persons, would by law require to be in writing and under seal, may be made by the Commissioner in writing in his corporate name under his common seal, and may be varied or discharged in the same manner.

(2.) Any contract which, if made between private persons, would by law require to be in writing and signed by the parties to be charged therewith, may be made by the Commissioner in writing in his corporate name, and may be varied or discharged in the same manner.

(3.) All contracts made according to the provisions herein contained and duly executed by the parties thereto respectively shall be effectual in law and shall be binding upon the Commissioner and all other parties thereto, their successors, heirs, executors and administrators.

25. The Commissioner shall annually, and at such other times as the Minister directs, prepare and submit to him a statement showing full details of contracts entered into by the Commissioner, and statements in such form as the Minister requires of all purchases made by him which are not covered by contracts, and shall, if so directed by the Minister in any particular case or in general, arrange for future purchases to be covered by contracts.

Particulars of contracts to be furnished to Minister.

26. The Commissioner may compound and agree with any person who has entered into any contract in pursuance of or under the authority of this Act, or against whom any action or suit is brought for any penalty contained in the contract, or in any bond or other security for the performance thereof, or for or on account of any breach or non-performance of the contract, bond or security, for such sum of money or other consideration as the Commissioner thinks proper.

Commissioner may compound for breach of contract.

27.—(1.) No person shall be entitled to carry, or to require the Commissioner to carry, upon any railway any goods whatsoever which, in the judgment of the Commissioner or his employees, are of a dangerous nature.

Bringing dangerous goods on the railway.

(2.) The Commissioner may refuse to take any parcel which he suspects to contain goods of a dangerous nature, or may require any parcel to be opened so that the nature of the contents may be ascertained.

28. The Commissioner may refuse to accept for conveyance upon the railways any goods which from their excessive weight or bulk would be inconvenient to transport, or he may, if he is agreeable to the acceptance of the goods for conveyance, fix special rates and conditions for their transport.

Commissioner not bound to convey goods of excessive weight.

29.—(1.) The Commissioner may carry and convey upon the railways all such passengers and goods as are offered for that purpose, and may demand such tolls, fares and charges and impose such conditions in respect thereof as are, upon the recommendation of the Commissioner, approved by the Minister.

Commissioner may demand tolls.

(2.) Subject to the provisions of this Act, all such tolls, fares and charges shall at all times be charged equally to all persons, and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers and of all goods of the same description, and conveyed or propelled by a like carriage or engine passing over the same portion of the line of railway and under the same circumstances; and no reduction or advance in any such tolls, fares or charges shall be made, either directly or indirectly, in favour of or against any particular company or person travelling upon or using the railway.

(3.) All such tolls, fares and charges shall be paid to such persons, and at such places upon or near to the railways, and in such manner, and under such regulations, as the Commissioner appoints.

(4.) Any publication purporting to contain a list of the tolls, fares, charges, and conditions recommended by the Commissioner and approved by the Minister, which is printed by the Government

Printer, shall be *prima facie* evidence that the tolls, fares, charges, and conditions contained therein were so recommended and approved, and, until the contrary is proved, that they are still in force.

Special tolls, &c.

30. Notwithstanding anything in this Act contained, the Commissioner may fix a special toll or charge for the conveyance of any special article or parcel of goods provided that the same toll or charge shall apply alike to all persons using the railways under the same conditions.

Contracts with Postmaster-General.

31. The Commissioner may enter into any agreement or contract with the Postmaster-General for the performance of any service for the Postmaster-General.

Power to connect with State railways.

32.—(1.) By arrangement with any State, the Commissioner may—

- (a) connect the railways with any State railway ; or
- (b) permit any State railway to be connected with the railways ; or
- (c) run trains or rolling-stock of the Commonwealth over any State railway with which the railways are connected ; or
- (d) permit trains or rolling-stock of any State railway with which the railways are connected to run over the railways or any part thereof.

(2.) No connexion which involves the construction of more than one mile of additional line of railway shall be made by the Commissioner in pursuance of this section.

Use of railways before open for traffic.

33. The Commissioner may, with the consent of the Minister, permit any part of the railways to be used for the carriage of passengers and goods before it has been declared open for traffic, but in that case all passengers shall be carried at their own risk, and all goods shall be carried at the risk of the owners thereof and the Commissioner shall incur no responsibility for any injury or damage to any such passengers or goods.

Division 4.—Duties of the Commissioner.

Commissioner to be common carrier.

34. For the purposes of this Act the Commissioner shall be deemed to be a common carrier, and (except as by this Act otherwise provided) shall be subject to the obligations and entitled to the privileges of common carriers.

General duties of Commissioner.

35. For the purposes and subject to the provisions of this Act, the Commissioner may do all that is necessary or convenient for making, maintaining, altering or repairing and using the railways.

Duties of Commissioner in respect to the railways, &c.

36. The Commissioner shall maintain the railways and all works in connexion therewith in a state of efficiency, and shall carry persons and goods without negligence or delay.

Inspection, maintenance and repairs of railways.

37. The Commissioner shall at all times cause to be made a careful inspection of the condition of the railways, and he shall be responsible for carrying out such ordinary maintenance

and repairs as may from time to time be necessary, and for carrying out such special repairs, alterations, renewals and extensions as may be authorized by the Minister.

38. The Commissioner shall prepare estimates, in such form as the Minister directs, of the receipts and expenditure for each financial year.

Commissioner to prepare annual estimates.

39. Before the Commissioner authorizes or incurs any expenditure for any works or services which are not chargeable against ordinary working expenses or maintenance, he shall submit to the Minister a statement of the proposed works or services, together with an estimate of the cost thereof.

Commissioner not to incur expenditure for special works without approval of Minister.

40. In the first month in each quarter of the year the Commissioner shall furnish to the Minister a written report setting out—

Quarterly reports by Commissioner.

- (a) the approximate expenditure and receipts during the past quarter ;
- (b) the general condition of the lines and accommodation for the traffic ;
- (c) the special rates (if any) which have been made and the reasons for making them ; and
- (d) the appointments and removals of employees holding permanent office.

41.—(1.) The Commissioner shall as soon as possible after the close of each financial year submit to the Minister an annual report and balance-sheet showing stocks on hand, depreciation of property, proceedings and an account of all moneys received and expended during that year.

Annual report by Commissioner.

(2.) The annual report shall be laid before both Houses of the Parliament within fourteen days after its receipt by the Minister, if the Parliament is then sitting, or, if the Parliament is not then sitting, within fourteen days after the next meeting of the Parliament.

42. The Commissioner shall furnish all such reports, documents, and information relating to the railways and the railway service as the Minister requires.

Further reports to Minister.

43.—(1.) The Minister may at any time in writing request the Commissioner to propose in writing a scheme for effecting an increase of income or a decrease of expenditure or for carrying out any matter of general policy specified by the Minister, and the Commissioner shall propose a scheme accordingly.

Carrying out of matters of policy.

(2.) If the Minister approves of the proposed scheme he may direct the Commissioner to take all necessary steps to carry it out.

(3.) If the Minister does not approve of the proposed scheme he may himself transmit to the Commissioner any proposition for effecting or carrying out such increase, decrease or matter of policy, and thereupon the Commissioner shall take all necessary steps to give effect to the proposition of the Minister.

(4.) If any doubt or difference of opinion occurs respecting the provisions of this section the doubt or difference may be finally determined by the Governor-General.

Alterations
made by
direction of
Minister.

44. The Minister may direct the Commissioner to make any alteration in any existing practice or carry out any system or matter of policy, but where any such direction, or any direction or proposition given or transmitted in pursuance of the last preceding section, adversely affects the accounts of the railways, the Commissioner shall notify the Minister thereof from time to time, and the amount of any loss occasioned by the direction or proposition shall, if certified by the Auditor-General, be provided by Parliament in the Annual Appropriation Act and paid to the Commissioner.

Adjustment of
weights and
measures on
railways.

45. The Commissioner shall cause all weights, measures, scales and other weighing machines in use upon the railways to be from time to time adjusted by some employee in the railway service appointed in that behalf by the Commissioner.

PART III.—THE RAILWAY SERVICE.

Commissioner to
appoint staff.

46.—(1.) Subject to this Act, the Commissioner shall appoint or employ such persons to assist in the execution of this Act as he thinks necessary, and every person so appointed shall hold office during pleasure only.

(2.) The Commissioner shall pay such salaries, wages and allowances to employees as he approves and as the Parliament appropriates for that purpose.

(3.) No employee appointed under this section shall without the written consent of the Commissioner engage in any employment outside the duties of his office.

Application of
*Arbitration
(Public Service)
Act 1911 to
Railway
Service.*

47. The *Arbitration (Public Service) Act 1911* shall apply to the Railway Service in like manner as it applies to the Public Service of the Commonwealth :

Provided that in its application to the Railway Service any reference in that Act to the Public Service Commissioner shall be read as a reference to the Commonwealth Railways Commissioner.

Persons already
employed
deemed
temporary
employees.

48. Every person who is at the commencement of this Act employed in connexion with any railway worked by the Commonwealth shall be deemed to be employed in a temporary office.

Commissioner
to make
appointments to
certain
permanent
offices.

49.—(1.) The Commissioner shall, as soon as practicable, and within a period of six months after the commencement of this Act, certify in writing to the Minister that certain offices for the working and maintenance of the railways should be deemed to be permanent offices.

(2.) Within a reasonable time after he has so certified the Commissioner shall in the prescribed manner make appointments to these offices, and shall submit to the Minister for publication in the *Gazette* the names, grades, ages, salaries, and wages of the persons so appointed.

Power to create
additional
permanent
offices.

50. The Commissioner may, from time to time, certify in writing to the Minister that the number of permanent offices should be increased by the addition of the offices specified by him, and may in the prescribed manner make appointments to those offices.

51.—(1.) The Commissioner shall not, without the sanction of the Governor-General—

- (a) increase the salary or wage of any employee whose annual salary or wage is more than Five hundred pounds ; or
- (b) increase the salary of, or create, any office carrying a salary of more than Five hundred pounds per annum, or appoint any person to an office the salary of which is more than Five hundred pounds per annum.

(2.) In this section the words “ salary ” and “ wage ” include all allowances other than travelling allowances.

Certain salaries not to be increased by Commissioner without approval.

52.—(1.) Any person—

- (a) who is at the commencement of this Act employed in the construction or working of any Commonwealth railway or is at any time thereafter employed in the Railway Service ; and
- (b) who is appointed to a permanent office in the Railway Service ; and
- (c) who, prior to his first employment in the construction or working of any Commonwealth railway or in the Railway Service held a permanent appointment (in this section referred to as “ prior permanent employment ”) in the Public Service of the Commonwealth, the Public, Railway or other service of a State, or under any authority constituted under a State ; and
- (d) whose employment in the construction or working of any Commonwealth railway or in the Railway Service has been continuous with his prior permanent employment,

shall, subject to this section, be entitled—

- (i) to have the period of his prior permanent employment and the period of his employment in the construction or working of any Commonwealth railway reckoned as employment in the Railway Service for the purpose of computing any annual, sick, or long-service leave under any by-law ; and
- (ii) to receive upon his retirement from the Railway Service compensation, retiring allowance or gratuity to such amount or at such rate as he would have been entitled to receive at the termination of his prior permanent employment had he at that time been eligible to retire from his prior permanent employment as having attained the retiring age :

Provided that an employee shall not be entitled by reason of his prior permanent employment to long-service leave or leave upon retirement for a longer period than four months.

(2.) For the purposes of this section employment shall not be deemed not to be continuous with prior permanent employment by reason only that a period of not more than three working days elapsed between the termination of the prior permanent employment of an employee and the commencement of his first-mentioned employment.

Rights of employees previously employed by Commonwealth or State.

Appeal by
officers.

53.—(1.) Any employee appointed to a permanent office may in the prescribed manner appeal against any decision of the Commissioner dismissing him or reducing his grade or rate of pay for incapacity or misconduct.

(2.) The appeal shall be to a Board of three persons, in this Part known as the Appeal Board.

(3.) The Appeal Board shall consist of a Chairman (who shall be a Police Stipendiary or Special Magistrate) to be appointed from time to time by the Minister, an employee to be appointed by the Commissioner from some branch of the Railway Service other than that in which the appellant is or was at the time of the dismissal or reduction employed, and a representative of the employees to be elected by the employees in the prescribed manner.

(4.) The Appeal Board shall have power to take evidence on oath and shall also have power to vary any punishment imposed.

(5.) The decision of the Appeal Board shall be final.

Retirement of
employees.

54. Every employee shall retire from the Railway Service on attaining the age of sixty-five years, but any employee who so desires may, with the permission of the Commissioner, retire from the Railway Service at any time after he has attained the age of sixty years.

PART IV.—FUNDS.

Division 1.—Plant and Stores Suspense Account.

Establishment
of Plant and
Stores Suspense
Account.

55.—(1.) For the purposes of this Act the Commissioner shall maintain a fund called the Plant and Stores Suspense Account.

(2.) The fund shall be kept in the prescribed manner.

(3.) There shall be debited to the fund the cost of plant and stores purchased, and the value of surplus plant and stores released from a survey or a railway under construction or which has been constructed.

(4.) There shall be credited to the fund the value of such plant and stores as are from time to time issued for use on works in connexion with the railways, the expenditure on which is chargeable either to loans authorized or amounts appropriated by the Parliament, and such loans or amounts shall be debited with the value of the plant and stores used in the works. The proceeds of the sale of any plant and stores shall also be placed to the credit of the fund.

(5.) There may be issued and applied for purchase of plant and stores any moneys at the credit of the fund.

Division 2.—Railway Accident and Insurance Fund.

Establishment of
Railway
Accident and
Insurance Fund.

56.—(1.) There shall be a fund to be called the Railway Accident and Insurance Fund, which shall be kept at the Treasury and dealt with as by this Act provided.

(2.) Subject to this section, there shall be paid to the fund the sum of Five shillings for every One hundred pounds of the revenue of the railways, and the Consolidated Revenue Fund is hereby appropriated for the purpose accordingly.

(3.) When and so long as the amount standing to the credit of the fund amounts to Twenty thousand pounds no sum shall be paid into the fund, but whenever, by payments thereout, the fund is at any time reduced below that sum, payments pursuant to this section shall be resumed until the sum is again reached.

57. There shall be paid out of the Railway Accident and Insurance Fund— Payments from fund.

- (a) the amount of damages recovered in any action at law arising out of any injury caused to any person other than an employee (whether resulting in the death of the person or not) by any wrongful act, neglect, or default of the Commissioner or of any of his employees, and the costs of the action ;
- (b) any amount that may without action at law be allowed by the Commissioner as compensation for any injury caused as aforesaid ;
- (c) any damages arising out of or in consequence of such injury to any person other than an employee ;
- (d) any amount which is from time to time payable by the Commissioner as compensation for personal injury by accident arising out of and in the course of the employment of an employee ;
- (e) the amount of any loss or damage by fire to any buildings, plant, stores or property of the Commissioner ;
- (f) the amount of any loss in connexion with or damage to any goods, parcels, luggage or other property in the custody or under the control of the Commissioner for the safe keeping of which he is responsible ; and
- (g) the amount of any sum allowed or payable by the Commissioner in respect of loss or damage caused by railway engines or by the neglect or default of employees whilst engaged in burning off within railway boundaries.

PART V.—CONSTRUCTION OF NEW RAILWAYS.

58.—(1.) The Commissioner shall, when so directed by the Minister, or as may be required for the purpose of supplying information to the Parliamentary Standing Committee on Public Works, have investigations, inspections, and preliminary surveys made of any proposed railway route. Preliminary investigation of proposed railway route.

(2.) The Commissioner shall supply to the Minister, if required, such plans, reports, estimates and information generally in respect of any proposed railway route as the Minister directs, or as will in the opinion of the Commissioner be of service to the Minister.

(3.) The expenditure incurred by the Commissioner in making investigations, inspections and surveys at the direction of the Minister shall not in any case exceed the sum authorized by the Minister for the purpose.

(4.) For the purpose of carrying out his duties under this section, the Commissioner may exercise any of the powers contained in this Part in relation to the construction of new railways.

Reports re proposed railways, &c., to be supplied by Commissioner.

59.—(1.) Where there has been referred to the Parliamentary Standing Committee on Public Works any public work involving the construction of a railway, the Commissioner shall transmit to the Minister under his official seal the following information, namely :—

- (a) a plan of the railway and of the lands through which it is to pass ;
- (b) a book of reference in which shall be set forth the names of the owners of the said lands so far as can with reasonable diligence be ascertained, a description of the said lands showing the bearings of the railway and the nature and quality of cultivation, the state of the enclosures (if any) and the quantity of such land required for the purpose of the railway ;
- (c) the estimated cost of the railway (including station buildings, signalling, &c.) when completed ;
- (d) the additional rolling-stock (if any) likely to be required for working the railway, and an estimate of the cost thereof ;
- (e) the estimated working expenses of the railway, including traffic, locomotive, and maintenance charges ;
- (f) the probable revenue which would be derived from the traffic on the railway ;
- (g) any other special advantages which are likely to accrue to the Department generally from the construction of the railway ; and
- (h) a general statement of the primary and other industries, and the possibilities thereof, of the district served by the proposed railway.

(2.) If the public work involves the construction of the railway along over or across any public reserve or road, the plans, sections and books of reference shall also contain particulars of the levels, and specify the several areas required to be taken for the purposes of the railway.

Commissioner's reports re proposed railways to be laid before Parliament.

60. If the Minister moves that the House of Representatives declare that it is expedient to carry out the proposed work the information supplied to him in pursuance of the last preceding section shall at the same time be laid before the House of Representatives.

Construction of railways not authorized except by Act of Parliament.

61.—(1.) Notwithstanding anything contained in the *Commonwealth Public Works Committee Act 1913-1914* the construction of a railway shall not be authorized by the Parliament except in pursuance of an Act of the Parliament the Bill for which was introduced into the House of Representatives by or on behalf of the Minister.

(2.) Any such Bill shall contain provisions relating to the following matters :—

- (a) A detailed description of the route of the proposed railway ;
- (b) the limit of deviation ; and
- (c) the maximum cost of the proposed railway.

62. When the Parliament has by Act authorized the construction of any railway, the Minister may give such orders and directions for the due carrying out and execution of the works, and for the effective control and direction of the Commissioner and other employees in carrying out and executing them, as he thinks fit, and the Commissioner shall have and may exercise all the powers of this Act with respect to the railway and works so authorized.

Construction of authorized railways.

63.—(1.) Subject to this Act any private lands, or, with the consent of the Minister, any lands being Crown lands of a State, roads or lauds which have been dedicated, reserved, or set apart for any public or other purpose whether by any State or by any private person, may be acquired by the Commissioner for the purposes of a railway.

Acquisition of lands for purposes of railway.

(2.) The provisions of the *Lands Acquisition Act 1906–1916* shall apply, with such modifications and adaptations as are prescribed, in relation to lands acquired or to be acquired for the purposes of a railway.

(3.) Nothing in this section shall be deemed to empower the Commissioner, without the authority of the Parliament, to acquire any lands dedicated, reserved, or set apart for public parks or recreation grounds.

64.—(1.) Notwithstanding any law to the contrary—

- (a) the Commissioner may with the approval of the Governor-General cause a railway to be constructed along, over and across any public reserve ;
- (b) the Commissioner may cause a railway to be constructed and maintained along, over and across any public road ; and
- (c) the Commissioner may construct and maintain any necessary structures in connexion with any railway constructed along, over and across any public reserve or road.

Powers in relation to reserves or public roads.

(2.) No person shall be entitled to claim compensation for or upon account of any land being acquired or used in or from any such public reserve or road for any of the purposes of this Act, nor for any damage or inconvenience arising to him or it by reason thereof ; but the Commissioner may, with the approval of the Governor-General, or as directed by the Governor-General, make such compensation in respect of any such land as is deemed expedient.

(3.) The Commissioner shall have full powers of ingress and egress over all such lands occupied for the purposes of the railway.

65.—(1.) The Commissioner and all persons authorized by him, either generally or specially, may do all other acts considered necessary for constructing, maintaining, altering, repairing, working and using any railway, and without limiting the generality of this power may exercise all or any of the undermentioned powers and authorities, namely:—

General powers of Commissioner.

- (a) enter upon the land of any person and survey and take levels of the land, and ascertain and mark or set out and take and appropriate such parts thereof as are proper for the construction, maintenance, alteration, repair, working, and using of any railway ;

- (b) in or upon or from any land, bore, dig, embank, and remove, or lay, take, convey, and use any material or thing ;
- (c) in, upon, across, under, or over any land, road, river, stream, or other water or water-course, make and construct any railway and such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, fences, and other works of whatsoever kind as are considered necessary ; and erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharves, engines, machinery, apparatus and other works and conveniences of whatsoever kind as are considered necessary ;
- (d) across any river, stream, or other water or water-course, at any place adjacent to the railway, construct any bridge or culvert for any purpose of traffic to or from the railway :
 Provided that in any such case the bridge or culvert shall be vested in the Commissioner, and the cost of its construction shall be included in the cost of construction of the railway, and the cost of its maintenance shall be defrayed out of the earnings of the railway ;
- (e) divert or alter temporarily or permanently the course, and raise or lower the level of any non-navigable river, stream or water-course, or any road ; and cause any road or any part thereof to be closed or lessened in width ;
- (f) notwithstanding any other law to the contrary, and without payment of any compensation, take from any river, stream, or other water or water-course, or any subterranean water, any water required, and also break the surface of any road for the purpose of laying down any drains, conduits, or pipes ; and
- (g) fell and remove any trees on any land within the distance of fifty yards from either side of the railway.

(2.) In the exercise of the powers granted by this Act, the Commissioner and all other persons shall do as little damage as may be, and, save as by this Act is otherwise provided, compensation shall be made, in the prescribed manner to all persons interested in any land taken, used, injured, or prejudicially affected for all damage sustained by them by reason of the exercise of such powers.

Closing of
roads.

66.—(1.) Whenever the Commissioner deems it necessary that any road or part thereof shall be closed, he shall deposit in the office of the local authority having jurisdiction over the road a map and description of the road, or part thereof, proposed to be closed, and shall notify in the *Gazette* that the map and description are there open for inspection, and that any person interested may make an objection to the closure by forwarding to the Commissioner within thirty days after the publication a notice of objection.

(2.) All such objections shall be duly considered by the Commissioner, and he may cause an inquiry to be held into the matter of any objection.

(3.) Before any such closure is authorized the Commissioner shall report to the Minister on the proposed closure, and any objections thereto, and the objectors shall be heard by the Minister if they so desire.

(4.) Thereupon the Governor-General may, by Order in Council, close the road or part thereof.

67. Whenever a railway is constructed over and above any road (whether an existing road or a road substituted therefor pursuant to this Act), the part of the road under the railway bridge or other structure exclusive of such piers or walls or other railway works shall be under the control of the local authority and maintainable by it.

Provision where
railway
constructed over
road.

68.—(1.) The Commissioner shall maintain in good order and repair the railway on any road over or along which it passes, and, if within a city or town, the surface of the roadway between the rails, and for the space of eighteen inches outside each rail.

Maintenance of
railways on
roads.

(2.) The character of the maintenance shall be in keeping with the road on which the railway has been constructed.

PART VI.—PENALTIES AND PROCEDURE.

69.—(1.) Whosoever—

- (a) travels in or on any carriage employed on any railway without having previously paid his fare, and with intent to avoid payment thereof; or
- (b) having paid his fare for a certain distance, knowingly and wilfully proceeds in any such carriage beyond that distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof; or
- (c) knowingly and wilfully refuses or neglects, on arriving at the point to which he has paid his fare, to quit that carriage; or
- (d) knowingly and wilfully travels or attempts to travel in any carriage, of a superior class to that which his ticket entitles him to use, with intent to avoid payment of the additional fare,

Fraudulent
travelling.

shall be guilty of an offence.

Penalty : Ten pounds.

(2.) If any person is discovered either in the act of or after committing or attempting to commit any such offence, any employee of the Commissioner or any constable or gaoler may lawfully apprehend and detain him until he can conveniently be taken before some justice, or until he is otherwise discharged in due course of law.

Carriage of goods of a dangerous nature.

70. No person shall send by, or offer for conveyance on, any railway, any goods whatever which in the judgment of the Commissioner or his officers are of a dangerous nature, without, at the time of so sending or offering them, marking distinctly on the outside of the package the nature of the goods, or otherwise at the time of sending or offering the goods giving notice in writing to the employee to whom the goods are delivered.

Penalty : Fifty pounds.

Persons employed on railways guilty of misconduct.

71.—(1.) If any person employed upon the railways or in repairing and maintaining the works of the railways—

- (a) is found drunk whilst so employed upon the railways ; or
- (b) wilfully, maliciously, or negligently does any act, or is guilty of any omission of duty, whereby the life or limb of any person passing along or being upon such railway, or the works thereof, respectively, is or might be injured or endangered, or whereby the passage of any engine, carriage, or trains is or might be obstructed or impeded,

he shall be guilty of an offence.

Penalty : One hundred pounds or imprisonment for six months.

(2.) Any employee or agent of the Commissioner or any special constable duly appointed and any person called to the assistance of such employee, agent or constable, may seize and detain the offender and convey him with all convenient despatch before any police, stipendiary or special magistrate without any other warrant or authority than this Act, to be dealt with according to law.

Recovery of rates or charges.

72. If on demand any person fails to pay the rates or charges due to the Commissioner in respect of any service rendered by the Commissioner, the Commissioner—

- (a) may detain and sell all or any of the goods of the person which are in his possession, and out of the moneys arising from the sale retain the rates or charges payable as aforesaid, and all charges and expenses of the detention, and shall render the surplus, if any, of the moneys arising by the sale and such of the goods as remain unsold, to the person entitled thereto ; or
- (b) may recover the rates and charges in any court of competent jurisdiction.

Other obstructions.

73. No person shall—

- (a) throw any gravel, stones, or rubbish, or any matter or thing upon any part of a railway ; or
- (b) drive or permit to wander, stray, or be driven upon any such railway, or the approaches thereto, any horse, ass, sheep, swine, or other beasts or cattle of any kind ; or
- (c) do any other act, matter, or thing to obstruct the free passage of any such railway, or any part thereof.

Penalty : Fifty pounds.

74. Unless authorized by the Commissioner so to do (proof whereof shall lie upon the person charged), no person shall—

Penalty for unauthorized sale or alteration of tickets.

- (a) sell or exchange or transfer or offer to sell or exchange or transfer the whole or any part of any ticket entitling or purporting to entitle the holder to travel on any part of the railway ; or
- (b) place, erase, omit, or alter any printed, written, engraved or stamped word, letter, mark or figure on or from a ticket or free pass.

Penalty : For a first offence, Twenty pounds ; and for a second or subsequent offence, One hundred pounds or imprisonment for six months, or both.

75. If any person inflicts, through any act, neglect, or default whereby he has incurred any penalty imposed by this Act, any damage upon any railway or other property vested in the Commissioner, he shall be liable to pay such damage in addition to such penalty, and the amount of such damage shall be determined by the magistrate.

Damage to be made good in addition to penalty.

76.—(1.) Any employee or agent and any person called by him to his assistance may seize and detain any person who has committed any offence against the provisions of this Act, and whose name and residence are unknown to the employee or agent, and may convey him with all convenient despatch before a police, stipendiary or special magistrate without any warrant or other authority than this Act.

Arrest of offenders.

(2.) The magistrate may proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

77. The Commissioner shall publish the short particulars of the several offences for which any penalty is imposed by this Act, or by any by-laws of the Commissioner, affecting other persons than employees, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed in some conspicuous part of the office of the Commissioner.

Publication of penalties.

78. All actions against the Commissioner or against any person for anything done or purporting to have been done under this Act, shall be commenced within six months after the act complained of was committed.

Limitation of actions against the Commissioner.

79.—(1.) No action against the Commissioner or any person for anything done, or purporting to have been done, by him under this Act—

Notices of occurrence of cause of action and of intended action.

- (a) shall be maintainable unless, as soon as practicable after the occurrence of the cause of action, notice of the occurrence of the cause of action has been delivered to him or at his office by or on behalf of the person bringing the action ; and

(b) shall be brought until one month, at least, after a notice in writing of the intended action has been delivered to him, or left at his office, by the party intending to commence the action, or by his attorney or agent:

Provided that the want of the notice specified in paragraph (a) shall not be a bar to the maintenance of an action if it is found that the Commissioner is not or would not, if a notice were then given and the hearing postponed, be prejudiced in his defence by the want of the notice, or that the want of the notice was occasioned by mistake or other reasonable cause.

(2.) The notice of the intended action shall clearly and explicitly state the cause of action and the court in which it is intended to be brought, and upon the back thereof shall be indorsed the name and place of abode of the party so intending to sue, and also the name and place of abode or of business of the attorney or agent, if the notice was served by the attorney or agent.

PART VII.—MISCELLANEOUS.

Medical
examination of
persons injured
in accident.

80.—(1.) Upon the occurrence of any accident upon the railways, the Commissioner may require any person who in the opinion of the Commissioner may have been injured in the accident to be examined at the cost of the Commissioner by one or more duly qualified medical practitioners nominated by the Commissioner and, unless the examination would thereby be delayed for a period of at least twenty-four hours, the person may require that the examination shall take place in the presence of a medical practitioner to be nominated and paid by the person.

(2.) If any person refuses or fails to undergo examination in accordance with the provisions of the last preceding sub-section, no damages or compensation shall be recoverable against the Commissioner in respect of personal injury to that person arising out of the accident unless he satisfies the court in which the action is brought that—

- (a) his refusal or failure to undergo examination was reasonable in the circumstances; and
- (b) the Commissioner is not prejudiced in his defence by the refusal or failure of the person to undergo examination.

Limit of
damages for
personal injury.

81. In any action brought against the Commissioner to recover damages or compensation in respect of personal injury, the court or jury shall not find or assess nor shall judgment be given or entered for the plaintiff for any amount of money exceeding the amount following, that is to say:—

- If the personal injury results in death, Two thousand pounds;
- If the personal injury results in permanent disablement, Two thousand pounds;
- If the personal injury results in temporary disablement, One thousand pounds.

82. The Commissioner shall be under no liability—

- (a) for loss or damage to goods which are left at or consigned to any station, siding, or stopping-place marked in the time tables or rate books as stations, sidings, or stopping-places at which no employee is in charge, or for any personal injury to any person at any such station, siding, or stopping-place ; or
- (b) to provide platform accommodation at any station, siding, or stopping-place ; or
- (c) for personal injury to any passenger who enters or alights from, or attempts to enter or alight from, a carriage when such carriage is not drawn up to the platform when such accommodation is provided.

Commissioner not liable for loss or injury in certain cases.

83. The Commissioner shall as soon as practicable forward to the Minister a report in writing of any accident occurring upon the railways, other than an accident of a minor nature.

Reports of accidents to be supplied to Minister.

84.—(1.) In the event of an accident occurring on the railways which involves loss of life, the Minister may direct that an inquiry be instituted into the circumstances of the accident and may for that purpose appoint a Board of Inquiry.

Inquiry into accidents.

(2.) The Chairman of the Board shall be a person holding judicial office and the Minister may appoint such other persons as he thinks fit.

(3.) The Commissioner and his employees shall render full assistance to the Board.

(4.) For the purpose of the inquiry, the Board shall have and may exercise all the powers and functions of a Royal Commission under the *Royal Commissions Act 1902-1912*, and the Chairman of the Board shall have all the powers conferred by that Act on the Chairman of a Royal Commission.

85. The provisions of the *Commonwealth Workmen's Compensation Act 1912* shall apply in relation to any personal injury caused to an employee by accident arising out of and in the course of his employment on the railways in like manner as they apply in relation to personal injury by accident arising out of and in the course of his employment to a workman in the service of the Commonwealth :

Application of Commonwealth Workmen's Compensation Act 1912 to employees.

Provided that any reference in that Act to the Commonwealth or to the Governor-General or to a Department of the Commonwealth shall for the purposes of this Act be read as a reference to the Commissioner.

86.—(1.) The Commissioner shall be entitled to reimbursement by the Treasury of the value of any pass over the railway issued by the Minister and the value of any special services ordered in connexion with the railways by the Parliament or by the Minister.

Reimbursement of Commissioner for passes issued by Minister and special services ordered.

(2.) The value in all such cases shall be determined by the Commissioner :

Provided that the sum so determined in respect of any pass or service shall not exceed the charge ordinarily made by the Commissioner for a similar service.

Railways need
not be fenced.

87. The Commissioner shall not, unless the Minister so directs, be required to fence any portion of the railways, but he may erect and maintain such fences in connexion therewith as he thinks proper.

PART VIII.—BY-LAWS.

By-laws.

88.—(1.) The Commissioner may make by-laws, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for the following:—

- (a) the terms and conditions of admission to, employment (including apprenticeship) in, and dismissal or retirement from the railway service;
- (b) the working of the railways, and the conditions governing the performance of any service which the Commissioner may under the Act carry out or authorize;
- (c) the protection and preservation of the railways and of other property of the Commissioner, and the protection and preservation of property in the custody of the Commissioner;
- (d) the maintenance of order on the railways;
- (e) the disposal of unclaimed goods;
- (f) the issue of free passes;
- (g) the prohibition of any interference with the railways or any other property of the Commissioner or of any interference with or obstruction of any employee;
- (h) the limitation of the liability of, and the conditions governing the making of claims upon, the Commissioner in respect of any damage to or loss of any goods;
- (i) the conditions under which any vessel may be permitted to use any wharf;
- (j) the conditions of—
 - (i) the construction, for and at the expense of any person, of any private siding; and
 - (ii) the connexion of any private siding with, and the maintenance and working of any private siding connected with, the railways; and
- k) the provision of penalties not exceeding Twenty pounds or imprisonment for any period not exceeding fourteen days for the breach of any by-law.

(2.) No by-law shall have any force or effect until it has been—

- (a) approved by the Governor-General; and
- (b) published in the *Gazette*.

(3.) By-laws shall not be deemed to be Statutory Rules within the meaning of the *Rules Publication Act 1903-1916*.

(4.) All such by-laws shall be laid before both Houses of the Parliament within thirty days after the making thereof, if the Parliament is then sitting, and if not, then within thirty days of the next meeting of Parliament.

1917.

Commonwealth Railways.

No. 31.

THE SCHEDULE.

Number and Year.	Short Title.	Extent of Repeal.
No. 7, 1911 ..	<i>Kalgoorlie to Port Augusta Railway Act 1911</i>	Sections 6 to 17 (inclusive).
No. 21, 1913 ..	<i>Pine Creek to Katherine River Railway Act 1913</i>	Sections 6 to 16 (inclusive).