

# AUSTRALIAN NATIONAL RAILWAYS AMENDMENT ACT 1977

No. 38 of 1977

An Act to amend the *Australian National Railways Act 1917*.

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

Short title,  
&c.

1. (1) This Act may be cited as the *Australian National Railways Amendment Act 1977*.<sup>1</sup>

(2) The *Australian National Railways Act 1917*<sup>2</sup> is in this Act referred to as the Principal Act.

Commence-  
ment.

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup>

(2) Sections 12 and 13 shall come into operation on a date to be fixed by Proclamation.

Interpret-  
ation.

3. Section 4 of the Principal Act is amended—

(a) by inserting in the definition of “Approved bank”, before the words “bank approved by the Treasurer”, the words “trading bank as defined by sub-section 5 (1) of the *Banking Act 1959* or another”; and

(b) by omitting the definition of “Railway service” and substituting the following definition:—

“ ‘Railway Service’ means the Service consisting of the persons appointed as officers or engaged as employees in accordance with Part III; ”.

Lease of  
railway  
property.

4. Section 21 of the Principal Act is amended by omitting from sub-section (1) the words “Subject to section 23, the” and substituting the word “The”.

5. (1) Section 23 of the Principal Act is repealed and the following section substituted:—

Contracts.

“23. The Commission shall not, without the approval of the Minister, enter into a contract under which the Commission is to pay an amount exceeding \$100,000 or, if a higher amount is prescribed, that higher amount.”.

(2) The Commission may, after the commencement of this section, enter into a contract in accordance with an approval given by the Minister under section 23 of the Principal Act as if that approval had been given under that section of the Principal Act as amended by this Act.

6. Section 29 of the Principal Act is amended—

(a) by inserting in sub-section (2), after the words “of this Act”, the words “and of the Railway Agreements”; and

(b) by adding after sub-section (4) the following sub-section:—

“(5) In this section, ‘Railway Agreements’ means the agreement approved by the *Railways Agreement (South Australia) Act 1975* and the agreement approved by the *Railways (Tasmania) Act 1975*.”.

Commissioner may demand tolls.

7. Section 41 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:—

Annual reports.

“(3) The Minister shall cause copies of the report and financial statements of the Commission, together with a copy of the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.”.

8. After the heading to Part III of the Principal Act the following Division heading is inserted:—

“*Division 1—General*”.

Heading to Division I of Part III.

9. Section 46 of the Principal Act is amended by adding after sub-section (4) the following sub-sections:—

Staff of Commission.

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

(a) the grounds upon which employees, or employees included in a specified 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 respect of employees against whom charges of misconduct are established.

“(6) A certificate signed by the General Manager or by a person acting as the General Manager that states that—

(a) a specified document is a true copy of a determination that was made by the Commission under sub-section (2);

(b) the terms and conditions of service or employment contained in a specified determination were determined by the Commission with the approval of the Public Service Board;

(c) the salary of a position referred to in a specified determination was determined by the Commission with the approval of the Minister; or

(d) a determination is in force or was in force during a period specified in the certificate,

shall, in any proceedings before a court, be *prima facie* evidence of the matters stated in the certificate.

“(7) A document purporting to be a certificate of the kind referred to in sub-section (6) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.”

Application  
of *Public  
Service  
Arbitration  
Act*  
1920-1973.

10. Section 47 of the Principal Act is repealed.

11. Section 51 of the Principal Act is repealed and the following section substituted:—

Super-  
annuation.

“51. (1) Nothing in this Act authorizes the provision of superannuation benefits otherwise than under the *Superannuation Act* 1976 for a person, other than a person referred to in sub-section (2) or (3), appointed or engaged under this Act.

“(2) 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—

- (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
- (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.

“(3) 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.

“(4) There shall be paid by the Commission to the Consolidated Revenue Fund, at such times as the Treasurer determines, in respect of transferred South Australian employees and transferred Tasmanian employees referred to in sub-section (2) or (3), such amounts as the

Treasurer determines in respect of the future liability of the Commonwealth to make payments relating to State retirement benefits in respect of those employees.

“(5) In this section—

‘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;
- (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
- (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 under the *Public Servants’ Retiring and Death Allowances Act 1925*, of the State of Tasmania;

‘transferred South Australian employee’ means a person who is appointed to the Railway Service in pursuance of the *Railways Agreement (South Australia) Act 1975*;

‘transferred Tasmanian employee’ means a person who is appointed to the Railway Service in pursuance of the *Railways (Tasmania) Act 1975*.

“(6) In this section, a reference to an Act of a State is a reference to the Act as amended and in force from time to time.”

12. (1) Section 53 of the Principal Act is repealed and the following sections are substituted:—

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

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

“(3) A Promotions Appeal Board shall be constituted, for the purposes of an appeal under section 53A, by a person holding an office of Chairman of a Promotions Appeal Board and such other members as are required under the by-laws.

“(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 such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed by the regulations.

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

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

Appeals  
against  
promotions  
or directions  
to act.

“53A. (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
- (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,

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.

“(4) The by-laws may make provision for and in relation to the grounds upon 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.

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

- (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 that position.

“(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.

“(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.

“(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
- (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
  - (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.

“53B. (1) For the purposes of this Part, the Commission shall from time to time arrange for the establishment of such Disciplinary Appeal Boards as are required. Disciplinary  
Appeal  
Boards.

“(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 53C, by a person holding an office of

Chairman of a Disciplinary Appeal Board and such other members as are required under the by-laws.

“(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 such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed by the regulations.

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

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

Appeals  
against  
decisions  
made in  
cases of  
misconduct.

“53C. (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 section, with respect to misconduct committed before the commencement of this section, the employee charged with the misconduct may appeal to a Disciplinary Appeal Board against that decision.

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

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

“(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.

“(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.

“53D. (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;

- (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.

“(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.

“(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 to answer any question when required to do so by a member of the Board; or
- (b) without reasonable excuse, refuse or fail to produce a document which he was required by the summons to produce.

Penalty: \$40.

“(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.

Penalty: \$40.

“(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—

- (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: \$40.



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

“(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, shall be read as including 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.”.

(2) Notwithstanding sub-section (1), section 53 of the Principal Act and any regulations made for the purposes of that section continue to apply to and in relation to any decision of the Commission dismissing an employee appointed to a permanent office, or reducing his grade or rate of pay, for incapacity or misconduct that was made by the Commission before the commencement of this section.

Retirement  
of  
employees.

13. Section 54 of the Principal Act is repealed.

14. After Division 1 of Part III of the Principal Act the following Division is inserted:—

*“Division 2—Powers and Functions of the Australian Conciliation and Arbitration Commission in respect of the Railway Service*

Interpret-  
ation.

“54A. (1) In this Division, unless the contrary intention appears—

‘Conciliation and Arbitration Commission’ means the Australian Conciliation and Arbitration Commission established by the *Conciliation and Arbitration Act 1904*;

‘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;

‘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;

‘prescribed’ means prescribed by regulations made under this Act.

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

“54B. (1) The 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.

Settlement of industrial disputes and determination of industrial matters in respect of Railway Service.

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

- (a) the *Compensation (Commonwealth Government Employees) Act 1971*, *Long Service Leave (Commonwealth Employees) Act 1976* or the *Superannuation Act 1976*; or
- (b) any other prescribed Act or the prescribed provisions of any other Act.

“54C. (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 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.

Application of provisions of Conciliation and Arbitration Act.

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

- (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 Conciliation and Arbitration Commission under paragraph 54B (1) (b) of this Act, as references to officers and employees to whose employment the industrial disputes or industrial matters relate, the Australian National Railways Commission and organizations of which any such officers and employees are members; and

- (c) references to arbitration shall be read as including references to the hearing and determination of industrial matters in respect of the Railway Service.

Awards deemed to be made under Conciliation and Arbitration Act.

“54D. 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.

Public Service Arbitration Act not to apply.

“54E. The *Public Service Arbitration Act* 1920 does not apply in relation to the employment of officers or employees of the Australian National Railways Commission.

Commission may be represented by officer of Australian Public Service.

“54F. In proceedings under the *Conciliation and Arbitration Act* 1904, the Commission may be represented by an officer of the Australian Public Service.”

Expenditure of moneys of Commission.

15. Section 57A of the Principal Act is amended by omitting from paragraph (a) of sub-section (2) the word “fixed”.

Maintenance of railways on roads.

16. Section 68 of the Principal Act is amended by omitting from sub-section (1) the words “of eighteen inches” and substituting the words “of 50 centimetres”.

Regulations.

17. Section 87B of the Principal Act is amended by inserting, after the word “prescribed” (first occurring), the words “by the regulations”.

By-laws.

18. Section 88 of the Principal Act is amended—

(a) by inserting in sub-section (1), after the words “not inconsistent with this Act”, the words “or with the regulations”;

(b) by inserting after sub-section (1) the following sub-section:—

“(1A) The by-laws may prescribe any of the matters referred to in sub-section (1) by applying, adopting or incorporating, subject to such modifications or adaptations (if any) as are prescribed by the by-laws, the provisions of any Act of the State of South Australia or of the State of Tasmania that relates to the Railways in that State or of any regulations, rules or by-laws made under such an Act.”; and

(c) by omitting sub-section (4) and substituting the following sub-section:—

“(4) Sections 48 and 49 of the *Acts Interpretation Act* 1901 apply to by-laws in like manner as they apply to regulations.”

19. (1) In this section, unless the contrary intention appears—

Transitional  
provision.

“Arbitrator” means the person holding, or performing the duties of, the office of Public Service Arbitrator under the *Public Service Arbitration Act 1920*;

“claim to which this section applies” means a claim made under the *Public Service Arbitration Act 1920*, or an application made under that Act to vary a determination of the Arbitrator, being a claim or application—

- (a) that was submitted to the Arbitrator before the commencing date; and
- (b) that relates, either in whole or in part, to the officers or employees of the Railway Service;

“commencing date” means the date of commencement of this section;

“determination” means a determination made under the *Public Service Arbitration Act 1920*.

(2) In this section, a reference to a determination that relates, in whole or in part, to any officers or employees in the Railway Service shall be read as including a reference to a determination that is not in operation but would, if it were in operation, relate, in whole or in part, to any officers or employees in the Railway Service.

(3) Notwithstanding the repeal of section 47 of the Principal Act by section 10 of this Act, the *Public Service Arbitration Act 1920* continues to apply, on and after the commencing date, subject to this section, to and in relation to—

- (a) a determination made before that date that relates, in whole or in part, to any officers or employees in the Railway Service; and
- (b) a claim to which this section applies that relates, in whole or in part, to any officers or employees in the Railway Service, being a claim in respect of which a determination has not been made before the commencing date,

as if section 47 of the Principal Act had not been repealed.

(4) Where a determination that was in operation immediately before the commencing date, or a determination that comes into operation on or after the commencing date, relates, in whole or in part, to any officers or employees in the Railway Service, the determination has effect according to its tenor, on and after the commencing day, or on and after the date on which it comes into operation, whichever is the later date, in relation to officers and employees in the Railway Service as if it were an award made under the *Conciliation and Arbitration Act 1904*, and that Act applies to and in relation to the determination as if it were such an award.

(5) Notwithstanding sub-section (3)—

- (a) a determination shall not be made under the *Public Service Arbitration Act 1920* on or after the commencing date varying a determination in its application to any officers or employees in the Railway Service, being a determination that was in operation immediately before the commencing date, unless it is made in respect of a claim to which this section applies; and
- (b) a determination made in respect of a claim to which this section applies shall not be varied, in its application to any officers or employees in the Railway Service, under the *Public Service Arbitration Act 1920*, except upon appeal duly made under that Act against the determination.

(6) Nothing in sub-section (5) prevents the variation of a determination, in its application to any officers or employees in the Railway Service, upon application duly made to the Australian Conciliation and Arbitration Commission under the *Conciliation and Arbitration Act 1904*.

(7) Nothing in this section shall be taken to affect the application of the *Public Service Arbitration Act 1920* in relation to a determination, or to a claim to which this section applies, in so far as the determination or claim relates to persons other than officers or employees in the Railway Service.

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#### NOTES

1. Act No. 38, 1977; assented to 7 June 1977.
2. Act No. 31, 1917, as amended. For previous amendments *see* Act No. 11, 1925; No. 87, 1936; Nos. 51 and 77, 1950; No. 64, 1954; Nos. 18 and 69, 1955; No. 99, 1956; No. 39, 1957; No. 17, 1960; No. 75, 1964; No. 93, 1966; Nos. 27 and 120, 1968; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 56, 1975.