



# **Australian National Railways Commission Act 1983**

**Act No. 140 of 1983 as amended**

**[Note: This Act is repealed by Act No. 96 of 1997]**

This compilation was prepared on 14 July 2005  
taking into account amendments up to Act No. 100 of 2005

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# An Act relating to the Australian National Railways Commission

## Part I—Preliminary

### 1 Short title [see Note 1]

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

### 2 Commencement [see Note 1]

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

### 3 Interpretation

(1) In this Act, unless the contrary intention appears:

**annual report** means an annual report on the Commission under section 9 of the *Commonwealth Authorities and Companies Act 1997*. **borrowing**, in relation to the Commission, includes raising money or credit, whether by dealing in securities or otherwise, but does not include raising credit in a transaction forming part of the day to day operations of the Commission.

**Chair** means the Chair of the Commission.

**Commission** means the Australian National Railways Commission.

**Commissioner** includes the Chair, the Deputy Chair and the Managing Director.

**corporate plan** means a corporate plan for the Commission under section 17 of the *Commonwealth Authorities and Companies Act 1997*.

**currency contract** means:

- (a) a forward exchange rate contract; or
- (b) a contract with respect to currency futures.

**Deputy Chair** means the Deputy Chair of the Commission.

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**employee**, in relation to the Commission, means any person appointed as an officer, or engaged as an employee, of the Commission.

**futures contract** means:

- (a) a deferred delivery contract; or
- (b) a contract with respect to financial futures; or
- (c) a contract with respect to commodity futures.

**goods** includes movable personal property of any kind.

**long service leave** includes long leave, furlough, extended leave or any other leave in the nature of long service leave (however described).

**Managing Director** means the Managing Director of the Commission.

**National Rail Corporation** means the company incorporated under the Corporations Law in the Australian Capital Territory as the National Rail Corporation Limited.

**National Rail Corporation Agreement** means the agreement approved by section 5 of the *National Rail Corporation Agreement Act 1992*.

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

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

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

- (4) A reference in this Act to the carriage of passengers and goods between prescribed places is a reference to the carriage of passengers and goods between:
- (a) a place in a State and a place in another State;
  - (b) a place in a State and a place in a Territory; or
  - (c) a place in a Territory and a place in the same or another Territory.

### **3A Crown to be bound**

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

### **3B Extra-territorial operation**

This Act extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

## Part II—Functions, Powers and Duties of the Commission

### 4 The Australian National Railways Commission

- (1) The Australian National Railways Commission, being the Commission established under the *Australian National Railways Act 1917*, is continued in existence.
- (2) The Commission:
  - (a) is a body corporate with perpetual succession;
  - (b) shall have a common seal; and
  - (c) may sue and be sued in its corporate name.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the Commission. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Commission appearing on a document and shall presume that the document was duly sealed.

### 5 Functions of Commission

The functions of the Commission are:

- (a) to provide railway services for the carriage of passengers and goods:
  - (i) over railways acquired from the States in accordance with paragraph 51(xxxiii) of the Constitution;
  - (ii) over railways constructed or extended in the States in accordance with paragraph 51(xxxiv) of the Constitution; and
  - (iii) between prescribed places;
- (b) to provide such other services as the Commission is authorized by this Act to provide;
- (c) to provide technical, engineering and other services to the Commonwealth and authorities of the Commonwealth;

- (d) to provide, at the request of the Commonwealth Government or with the approval of the Minister, technical, engineering and other services outside Australia;
- (e) to do anything incidental or conducive to the performance of the functions referred to in any of the preceding paragraphs; and
- (f) to provide, in Australia, to persons other than the Commonwealth and authorities of the Commonwealth such technical, engineering and other services as can conveniently be provided by the use of the resources of the Commission that are not immediately required by the Commission for the performance of the functions referred to in the preceding paragraphs; and
- (g) any other functions required to be carried out by the Commission in order for Part VA to be given effect to.

Note: Part VA deals with transfers of assets of the Commission for the purpose of winding down the Commission.

## **6 General powers of Commission**

- (1) Subject to this Act, the Commission has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions or of its duties and, in particular, has power:
  - (a) to enter into contracts;
  - (b) to acquire, hold and dispose of real and personal property;
  - (c) to occupy, use and control any land or building owned or held under lease by the Commonwealth or a State or Territory and made available to the Commission;
  - (d) to construct railways;
  - (e) to erect buildings and structures and carry out works;
  - (f) to manufacture plant, machinery, equipment and goods;
  - (g) to hire out plant, machinery, equipment and goods that are not immediately required by the Commission for the performance of its functions or of its duties;
  - (h) to provide transport, accommodation, provisions and facilities for employees of the Commission and their families;
  - (j) to appoint agents and attorneys and to act as an agent for other persons;

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- (k) to engage consultants; and
  - (m) to do anything incidental to any of its powers.
- (2) The powers of the Commission may be exercised both within and outside Australia.
- (3) Subsections (1) and (2) have effect subject to section 6AA (which deals with directions to the Commission).

**6AA Ministerial directions**

- (1) The Minister may, by written notice given to the Commission, give directions to the Commission about the performance of the Commission's functions or the exercise of the Commission's powers.
- (2) A direction under subsection (1) may be given for the purposes of winding down the various activities of the Commission and, in particular, a direction may:
- (a) require the Commission to:
    - (i) cease to perform a specified function; or
    - (ii) cease to exercise a specified power; or
  - (b) impose restrictions or conditions on:
    - (i) the performance by the Commission of a specified function; or
    - (ii) the exercise by the Commission of a specified power.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

- (3) A direction under subsection (1) may make provision for or in relation to a matter by conferring a power of the Commission on the Minister.
- (4) Subsections (2) and (3) do not, by implication, limit subsection (1).
- (5) The Commission must comply with a direction under subsection (1).
- (6) A copy of a direction under subsection (1) is to be published in the *Gazette* within 14 days after the giving of the direction.

**6A Commission must take action to facilitate National Rail Corporation Agreement etc.**

- (1) The Commission must ensure that it, and its officers and employees:
  - (a) take all reasonable action that will facilitate; and
  - (b) refrain from taking any action that will impede;the transfer to the National Rail Corporation of functions, and the transfer or leasing of, or the granting of access to, assets, in accordance with the National Rail Corporation Agreement.
- (2) If the Minister is satisfied that the Commission has failed to comply with its obligations under subsection (1), the Minister may, in writing, request the Commission to take or refrain from taking specified action within a specified period and the Commission must comply with the request.

**8 Powers of Commission to participate in formation of companies etc.**

- (1) The Commission shall not, without the approval of the Minister:
  - (a) participate in the formation of a company;
  - (b) subscribe for, or otherwise acquire, shares in a company;
  - (c) enter into a partnership; or
  - (d) enter into an arrangement for the sharing of receipts or profits.
- (2) An approval under subsection (1) shall be given by instrument in writing.

**9 Transport otherwise than by rail**

- (1) The Commission may (as incidental or supplementary to, or in association with, the provision of railway services) provide services for the carriage of passengers and goods, otherwise than by rail, between:
  - (a) prescribed places;
  - (b) to the extent necessary to carry out an arrangement under section 10—a place in a State and another place in that State;or

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- (c) to the extent provided by subsection (2)—a place in a State and another place in that State.
- (2) The powers of the Commission by virtue of paragraph (1)(c) may be exercised only in so far as the exercise of those powers is incidental to the exercise of another power, or other powers, of the Commission.

**10 Joint services**

The Commission may make and carry out an arrangement with any person:

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

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

- (1) It is the intention of the Parliament that, subject to subsection (2), the Commission shall have and perform and may exercise, in addition to the functions and powers conferred on it by this Act, functions and powers conferred on it specifically by a law of a State or Territory, being functions and powers relating to land transport in the State or Territory.
- (2) The regulations may provide that subsection (1) does not extend to all or any of the functions or powers expressed to be conferred on the Commission by a law of a State or Territory.

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

The Commission, by arrangement with another person, may:

- (a) subject to section 14, connect a railway operated by the Commission with a railway operated by the person;
- (b) permit a railway operated by the person to be connected with a railway operated by the Commission;
- (c) run its locomotives and other rolling stock over a railway operated by the person; or



- (d) permit locomotives and other rolling stock of the person to run over a railway operated by the Commission.

### **13 Sale and supply of travellers' requisites**

- (1) Without limiting the generality of subsection 6(1), the Commission may:
  - (a) sell and supply travellers' requisites on passenger trains; and
  - (b) sell and supply travellers' requisites, on premises set aside under subsection (2), to persons travelling on services operated by the Commission and to other persons.
- (2) The Commission may set aside premises owned or occupied by it for the sale and supply of travellers' requisites to persons travelling on services operated by the Commission and to other persons.
- (3) Where the Commission leases to a person premises set aside under subsection (2), the Commission may, in writing, grant to the person an authority, for such term, and subject to such conditions, as are specified in the authority, to sell and supply, on the premises, travellers' requisites to persons travelling on services operated by the Commission and to other persons.
- (4) The Commission shall:
  - (a) in selling and supplying travellers' requisites on premises set aside under subsection (2), ensure; and
  - (b) specify in each authority granted under subsection (3), in relation to premises set aside under subsection (2), conditions for the purpose of ensuring;  
that, as far as is reasonably practicable, goods are not sold or supplied on the premises to persons resorting to the premises solely or principally for the purpose of obtaining those goods at times outside the days and hours of trading or business that would, but for this section, be applicable, under the law of the State or Territory in which the premises are situated, in relation to the sale or supply of those goods.
- (5) The Commission may exercise its powers under this section, the employees of the Commission may act in accordance with the powers of the Commission under this section and a person who holds an authority under subsection (3), and the servants and agents of such a person, may, subject to the conditions to which the

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authority is subject, act in accordance with the authority, without obtaining or having any other authority, licence, permit or registration.

- (6) Notwithstanding any law of a State or Territory to the contrary:
- (a) the Commission, and its employees, may permit the consumption, on passenger trains and on premises set aside under subsection (2), of meals and refreshments;
  - (b) a person who holds an authority under subsection (3), and his servants and agents, may permit the consumption, on the premises to which the authority relates, of meals and refreshments; and
  - (c) a person may, on a passenger train or on premises set aside under subsection (2), obtain and consume meals and refreshments sold or supplied in accordance with this section.
- (7) Except as expressly provided in this section, this section does not exempt a person from compliance with the law of a State or Territory.

- (8) In this section:

*passenger train* means a train operated by the Commission that is carrying, or waiting to carry, passengers.

*refreshments* includes alcoholic beverages.

*travellers' requisites* means:

- (a) meals;
- (b) refreshments;
- (c) tobacco, cigars, cigarettes, pipes and other smokers' requisites; and
- (d) other goods required, or likely to be required, by persons while travelling on services operated by the Commission.

**13A Provision of entertainment etc.**

- (1) Without limiting the generality of subsection 6(1), the Commission may, in accordance with by-laws in force under paragraph 79(1)(ca), provide entertainment (including gambling facilities) or other services (not being services provided under section 13) specified in the by-laws:
- (a) on passenger trains; or

- (b) on premises owned or occupied by the Commission.
- (2) Entertainment or other services provided by the Commission as mentioned in subsection (1) shall be provided only for persons travelling on services operated by the Commission.
- (3) Notwithstanding any law of a State or Territory to the contrary:
  - (a) the Commission, and its employees, may permit persons to make use of entertainment or other services provided by the Commission in accordance with by-laws in force under paragraph 79(1)(ca); and
  - (b) a person may, in accordance with those by-laws, make use of entertainment or other services so provided.
- (4) In this section:
  - (a) a reference to the Commission, or to its employees, includes a reference to a person acting with the authority of the Commission or to the employees of such a person, as the case may be; and
  - (b) *passenger train* has the same meaning as in section 13.

#### **14 Construction of railways**

- (1) The Commission shall not construct a railway in Australia that is more than 25 kilometres in length unless the Parliament has, by an Act, authorized the construction of the railway by the Commission.
- (2) A Bill to authorize the construction of a railway by the Commission shall contain provisions relating to the following matters:
  - (a) a detailed description of the route of the proposed railway;
  - (b) the limit of deviation;
  - (c) the estimated cost of the construction of the proposed railway.
- (3) Notwithstanding any law of the Commonwealth (other than this Act) or any law of a State or Territory to the contrary:
  - (a) the Commission may, with the approval of the Governor-General, construct a railway on, over or under land that, under the law of a State or Territory, is dedicated or reserved, or is vested in trustees, as a public park or otherwise for the purposes of public recreation; and

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- (b) the Commission may construct a railway on, over or under any road.
- (4) The power under subsection (3) to construct a railway on, over or under land or a road, includes the power:
  - (a) to erect on, over or under the land or road, as the case may be, buildings or other structures for use in connection with the railway; and
  - (b) to install equipment on, over or under the land or road, as the case may be, for use in connection with the railway.
- (5) The Commission shall not exercise its powers under subsection (3) in relation to land or a road unless it has given reasonable notice, in writing, of its intention to do so to the authority having care and management of the land or road, as the case may be.

**15 Power to enter land etc.**

- (1) The Commission may:
  - (a) for the purpose of ascertaining the suitability of any land (including land owned or occupied by the Commonwealth or a State or Territory) for the purposes of the Commission:
    - (i) enter on, and inspect, the land; and
    - (ii) on land so entered, do any act or thing necessary or convenient for that purpose, including, without limiting the generality of the foregoing, making surveys, taking levels, sinking bores, taking samples, digging pits and examining the soil; and
  - (b) for the purpose of surveying or obtaining information in relation to any land that, in the opinion of the Commission, is or may be suitable for the purposes of the Commission:
    - (i) enter on adjacent land (including land owned or occupied by the Commonwealth or a State or Territory); and
    - (ii) on land so entered, do any act or thing necessary or convenient for that purpose, including, without limiting the generality of the foregoing, making surveys and taking levels.
- (2) The Commission shall, before exercising its powers under subsection (1) in relation to any land, give reasonable notice, in writing, of its intention to do so to:

- (a) the owner of the land; and
  - (b) if the land is occupied by a person other than the owner of the land—the occupier of the land.
- (3) A notice under subsection (2) in relation to land shall specify the purpose for which the Commission intends to exercise its powers under subsection (1) in relation to the land.

### **16 Powers relating to construction etc. of railways**

- (1) The Commission may, for purposes connected with the construction, maintenance, alteration or repair of a railway:
- (a) enter on, and occupy, any land (including land owned or occupied by the Commonwealth or a State or Territory); and
  - (b) on, over or under land so entered or occupied, do any act or thing necessary or convenient for those purposes, including, without limiting the generality of the foregoing:
    - (i) diverting or altering, temporarily or permanently, the course of any watercourse;
    - (ii) raising or lowering, temporarily or permanently, the level of any watercourse or other body of water;
    - (iii) placing any plant, machinery, equipment or goods;
    - (iv) taking or depositing sand, clay, stone, earth, gravel, timber, wood or other materials or things;
    - (v) felling or lopping trees and clearing or removing other vegetation or undergrowth;
    - (vi) making cuttings, embankments, excavations or tunnels;
    - (vii) manufacturing or working materials, goods or things;
    - (viii) erecting temporary workshops, sheds or other buildings;
    - (ix) constructing roads or bridges;
    - (x) temporarily closing, diverting or narrowing any road;
    - (xi) breaking the surface of any road for the purpose of laying down railway tracks, drains, pipes, cables, wires and other things;
    - (xii) altering the position of any main, pipe, cable or wire;
    - (xiii) taking water from any watercourse or other body of water; and
    - (xiv) demolishing, destroying or removing any plant, machinery, equipment, goods, workshop, shed or

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building placed or erected on the land in pursuance of this subsection.

- (2) The Commission shall, before exercising its powers under subsection (1) in relation to any land, give reasonable notice, in writing, of its intention to do so to:
  - (a) the owner of the land; and
  - (b) if the land is occupied by a person other than the owner of the land—the occupier of the land.
- (3) A notice under subsection (2) in relation to land shall specify the purpose for which the Commission intends to exercise its powers under subsection (1) in relation to the land.
- (4) The Commission shall not, in the exercise of its powers under subsection (1):
  - (a) close, divert or narrow, or break the surface of, a road;
  - (b) alter the position of any water, sewerage or gas main or pipe; or
  - (c) alter the position of any electricity cable or wire; or
  - (d) alter the position of any line (within the meaning of the *Telecommunications Act 1997*);unless it has given reasonable notice, in writing, of its intention to do so to the authority having the care and management of the road, main, pipe, cable, wire or line.
- (5) In this section, *watercourse* includes any river, stream, ditch, drain or other channel or passage through which water flows.

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

- (1) The Commission shall take all reasonable steps to ensure that, in exercising its powers under sections 15 and 16, it causes as little detriment and inconvenience, and does as little damage, as is practicable.
- (2) Where the owner or occupier of land suffers loss or damage by reason of the exercise in relation to the land of any of the Commission's powers under section 15 or 16, the Commission is liable to pay him such compensation as is agreed upon between them or, in the absence of agreement, such compensation as is determined by a court of competent jurisdiction.

- (3) Compensation under subsection (2) shall include compensation in respect of:
- (a) damage of a temporary character as well as of a permanent character; and
  - (b) the taking of sand, clay, stone, earth, gravel, timber, wood, water and other materials or things.

- (4) In this section:

***court of competent jurisdiction***, in relation to the owner or occupier of land, means:

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

***owner***, in relation to land, means a person who:

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

## **18 General duties of Commission**

- (1) The Commission shall conduct its operations safely, efficiently and, subject to section 6AA, subsection 55(3) and Part VA, in a manner that accords with sound commercial practice.
- (2) Nothing in subsection (1) shall be taken to impose on the Commission a duty that is enforceable by proceedings in a court.

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**20A Minister may give Commission notices about its strategic direction etc.**

- (1) The Minister may, from time to time, by notice in writing to the Commission, advise the Commission of his or her views in relation to the following matters:
  - (a) the appropriate strategic direction of the Commission;
  - (b) the manner in which the Commission should perform its functions.
- (2) The Commission must, in performing its functions, take account of notices given to it under subsection (1).
- (3) The Commission must, in preparing its corporate plan, take account of notices given to it under subsection (1) of this section.

**20B Minister may direct Commission to give documents and information to nominee**

- (1) In this section:

*ministerial nominee* means a person whose responsibilities or duties include advising the Minister about the performance and strategies of the Commission.
- (2) The Minister may direct the Commission to give to a specified ministerial nominee any documents or information relating to the operations of the Commission that the nominee requests.
- (3) The Commission must comply with a direction by the Minister under subsection (2).
- (4) The Commission must include in the annual report for a financial year particulars of any directions given to the Commission by the Minister under subsection (2) in that financial year.

**21 Charges for services**

- (1) The rates of charges for any service provided by the Commission shall be such as the Commission, subject to this section, section 6AA and to subsections 18(1) and 55(3), fixes for the services.



- (2) The Commission shall, as soon as practicable after the commencement of this Act:
- (a) determine, by instrument in writing, the principles in accordance with which it proposes to fix rates of charges for prescribed services; and
  - (b) inform the Minister, by notice in writing, of the principles that it has so determined.
- (3) The Minister may, before the expiration of the period of 60 days after receipt by him of the notice referred to in paragraph (2)(b):
- (a) determine, by instrument in writing, the principles in accordance with which the Commission is to fix rates of charges for a prescribed service or for the prescribed services included in a class of prescribed services; and
  - (b) inform the Commission, by notice in writing, of the principles so determined and the reasons for the determination.
- (4) Where the Commission proposes to make an alteration to the principles in accordance with which it fixes rates of charges for a prescribed service or for the prescribed services included in a class of prescribed services, the Commission shall inform the Minister, by notice in writing, of the proposed alteration.
- (5) Where the Minister receives a notice under subsection (4) of a proposed alteration to the principles in accordance with which the Commission fixes rates of charges for a prescribed service or for the prescribed services included in a class of prescribed services, the Minister may, before the expiration of 60 days after receipt by him of the notice, by instrument in writing:
- (a) approve the proposed alteration to those principles;
  - (b) determine an alteration to those principles that is different from the alteration proposed in the notice; or
  - (c) refuse to agree to any alteration to those principles;
- and inform the Commission, by notice in writing, of the approval, determination or refusal, as the case may be.
- (6) If the Minister does not, before the expiration of 60 days after the receipt by him of a notice under subsection (4) proposing an alteration to the principles in accordance with which the Commission fixes rates of charges for a prescribed service or for the prescribed services included in a class of prescribed services:
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- (a) approve the alteration proposed in the notice;
  - (b) determine an alteration to the principles that is different from the alteration proposed in the notice; or
  - (c) refuse to agree to any alteration to the principles;
- and inform the Commission as mentioned in subsection (5), he shall be deemed to have, at the expiration of that period, approved, under subsection (5), the alteration proposed in the notice.
- (7) The Commission shall not fix a rate of charge for a prescribed service otherwise than:
- (a) if the Commission has determined principles under subsection (2) in relation to the prescribed service, the Minister has not determined principles under subsection (3) in relation to the prescribed service and no alteration to the principles determined by the Commission has been approved or determined under subsection (5) in relation to the prescribed service—in accordance with the principles so determined by the Commission;
  - (b) if the Minister has determined principles under subsection (3) in relation to the prescribed service and no alteration to those principles has been approved or determined under subsection (5)—in accordance with the principles so determined by the Minister; or
  - (c) if any principles are applicable in relation to the prescribed service by virtue of a determination under subsection (2) or (3) and an alteration has or alterations have been approved or determined under subsection (5) to those principles—in accordance with those principles as so altered by the alteration or alterations.
- (8) A reference in this section to a prescribed service is a reference to a service for the carriage of passengers or goods.

**23 Delegation**

- (1) The Commission may by writing under its common seal, delegate to a person any of its powers under this Act.

## **Part III—Constitution and Meetings of the Commission**

### **24 Constitution of Commission** *[see Note 2]*

- (1) The Commission consists of the following Commissioners:
  - (a) the Chairman of the Commission;
  - (a) the Deputy Chairman of the Commission;
  - (b) the Managing Director of the Commission;
  - (c) such number of other Commissioners as the Minister appoints.
- (2) The Commissioners (other than the Managing Director) are to be appointed by the Minister by written instrument. The appointment takes effect from the day specified in the instrument.
- (2A) The Commissioners (other than the Managing Director) hold office during the Minister's pleasure.
- (4) The Chair may be appointed on either a full-time or part-time basis.
- (5) The Commissioners (other than the Chair and the Managing Director) shall be appointed on a part-time basis.
- (6) The Chair, Deputy Chair and other Commissioners (other than the Managing Director) hold office on such terms and conditions (in respect of matters not provided for by this Act) as are determined by the Minister by instrument in writing.
- (7) The performance of the functions, and the exercise of the powers, of the Commission are not affected by reason only of there being a vacancy or vacancies in the membership of the Commission.

### **26 Remuneration and allowances of Commissioners**

- (1) The Chair, Deputy Chair and other Commissioners shall be paid by the Commission such remuneration as is determined by the Remuneration Tribunal.

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- (2) If no determination by the Tribunal of the remuneration of the Deputy Chair is in operation, the Deputy Chair shall be paid by the Commission such remuneration as is prescribed by the regulations.
- (3) The Chair, Deputy Chair and other Commissioners shall be paid by the Commission such allowances as are prescribed by the regulations.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**27 Leave of absence**

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

**28 Resignation**

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

**29 Acting Chairman**

- (1) Subject to subsection (2), the Minister may appoint the Deputy Chair, another Commissioner or another person:
  - (a) to act as Chair, on a full-time or part-time basis, during a vacancy in the office of Chair;
  - (b) where the Chair has been appointed on a full-time basis—to act as Chair, on a full-time or part-time basis, during any period, or during all periods, when the Chair is absent from duty or from Australia or is, for any reason, unable to perform the duties of his office; or
  - (c) where the Chair has been appointed on a part-time basis—to act as Chair, on a part-time basis, during any period, or during all periods, when the Chair is absent from Australia or is, for any reason, unable to perform the duties of his office.
- (2) The Managing Director shall not be appointed to act as Chair.
- (9) The validity of anything done by or in relation to a person purporting to act as Chair shall not be called in question on the ground that the occasion for his appointment had not arisen, that

there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

### **30 Acting Deputy Chairman**

- (1) The Minister may appoint a Commissioner or another person to act as Deputy Chair:
  - (a) during a vacancy in the office of Deputy Chair, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Deputy Chair is acting as Chair, is absent from Australia or is, for any reason, unable to perform the duties of his office.
- (8) The validity of anything done by or in relation to a person purporting to act as Deputy Chair shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

### **31 Acting Commissioner**

- (1) The Minister may appoint a person to act as a Commissioner referred to in paragraph 24(1)(d):
  - (a) during a vacancy in the office of such a Commissioner; or
  - (b) during any period, or during all periods, when such a Commissioner is acting as Chair or Deputy Chair, is absent from Australia or is, for any reason, unable to perform the duties of his office.
- (8) The validity of anything done by or in relation to a person purporting to act as a Commissioner shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

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**34 Meetings of Commission**

- (1) The Commission shall hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chair:
  - (a) may, at any time, convene a meeting of the Commission; and
  - (b) shall, on receipt of a written request signed by not less than 2 other Commissioners, convene a meeting of the Commission.
- (3) The Minister may, at any time, convene a meeting of the Commission.
- (4) The Chair shall preside at all meetings of the Commission at which he is present.
- (5) Where the Chair is not present at a meeting of the Commission:
  - (a) the Deputy Chair shall preside at the meeting; or
  - (b) if the Deputy Chair is not present at the meeting—the Commissioners present shall appoint one of their number to preside at the meeting.
- (6) At a meeting of the Commission, a quorum is constituted by half of the Commissioners.
- (7) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the Commissioners present and voting.
- (8) The person presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

**34A Application of Part in relation to Managing Director**

Sections 25 to 28 (inclusive) and 32 do not apply in relation to the Managing Director.

## **Part IV—The Staff of the Commission**

### **Division 1—Managing Director**

#### **35 Managing Director**

There shall be a Managing Director of the Commission.

#### **36 Duties**

- (1) The Managing Director shall be the chief executive officer of the Commission.
- (2) The Managing Director shall act in accordance with any policies determined by, and any directions given by, the Commission.
- (3) All acts and things done in the name of, or on behalf of, the Commission by the Managing Director shall be taken to have been done by the Commission.

#### **36A Appointment**

- (1) The Managing Director is to be appointed by the Commission.
- (2) The Commission must not appoint the Chair, the Deputy Chair, or a Commissioner referred to in paragraph 24(1)(d), as Managing Director.
- (3) The appointment of a person as Managing Director is not invalid merely because of a defect or irregularity in relation to the appointment.

#### **36B Managing Director to hold office during Commission's pleasure etc.**

The Managing Director:

- (a) shall be appointed with effect from the day specified in the instrument of appointment; and
- (b) holds office during the Commission's pleasure.

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**36C Managing Director may be full-time or part-time**

The Managing Director may hold office on either a part-time or a full-time basis.

**36D Terms and conditions of appointment not provided for by Act**

The Managing Director holds office on such terms and conditions (including terms and conditions relating to remuneration and allowances) in relation to matters not provided for by this Act as are determined by the Commission.

**36E Disclosure of interests**

The Managing Director shall give written notice to the Chair of all direct and indirect pecuniary interests that the Managing Director has or acquires in any business or in any body corporate carrying on a business.

**36F Acting Managing Director**

- (1) The Commission may appoint a Commissioner or another person to act as Managing Director during a vacancy in the office of Managing Director (whether or not an appointment has previously been made to the office).
- (2) The Commission may appoint a Commissioner or another person to act as Managing Director during any period, or during all periods, when the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.
- (3) Anything done by or in relation to a person purporting to act as Managing Director is not invalid merely because:
  - (a) the occasion for the appointment had not arisen;
  - (b) there was a defect or irregularity in relation to the appointment;
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion for the person to act had not arisen or had ceased.



## **Division 2—The Railway Service**

### **37 The Railway Service**

- (1) The Railway Service established under the *Australian National Railways Act 1917* is continued in existence.
- (2) The Commission may appoint such officers, and engage such employees, as it considers necessary for the performance of its functions and duties and the exercise of its powers.
- (3) The Railway Service consists of the persons appointed as officers, or engaged as employees, of the Commission.

### **38 Terms and conditions of employment**

- (1) The terms and conditions of service or employment (in respect of matters not provided for by this Act) of the employees of the Commission are such as are determined by the Commission by instrument in writing.
- (2) The terms and conditions of service and employment that may be determined under subsection (1) include terms and conditions specifying:
  - (a) the grounds on which employees, or employees included in a class of employees, may be charged with misconduct;
  - (b) the manner in which charges of misconduct may be dealt with; and
  - (c) the kinds of action that may be taken in relation to employees against whom charges of misconduct are established.
- (3) A certificate signed by the Managing Director, or another person authorized by the Commission, by instrument in writing, for the purposes of this subsection, that states that:
  - (a) a specified document is a true copy of a determination made by the Commission under subsection (1); or
  - (b) such a determination is in force or was in force during a specified period or was in force at a specified time;is *prima facie* evidence of the matters stated in the certificate.

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

**39 Promotions Appeal Boards**

- (1) For the purposes of this Division, the Commission shall from time to time arrange for the establishment of such Promotions Appeal Boards as are required for the Railway Service.
- (2) The Commission may appoint a person having the qualifications prescribed by the by-laws to be a Chair of a Promotions Appeal Board.
- (3) A Promotions Appeal Board shall be constituted, for the purposes of an appeal under section 40, by a person holding office as Chair 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 Chair, shall be appointed in the manner prescribed by the by-laws.
- (5) A Chair of a Promotions Appeal Board shall be paid by the Commission such remuneration as is determined by the Remuneration Tribunal.
- (6) A Chair of a Promotions Appeal Board shall be paid by the Commission such allowances as are prescribed by the regulations.
- (7) Subsections (5) and (6) have effect subject to the *Remuneration Tribunal Act 1973*.

**40 Appeals against promotions or directions to act**

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

**41 Disciplinary Appeal Boards**

- (1) For the purposes of this Division, the Commission shall from time to time arrange for the establishment of such Disciplinary Appeal Boards as are required for the Railway Service.
- (2) The Commission may appoint a person having the qualifications prescribed by the by-laws to be a Chair of a Disciplinary Appeal Board.
- (3) A Disciplinary Appeal Board shall be constituted, for the purposes of an appeal under section 42, by a person holding office as Chair 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 Chair, shall be appointed in the manner prescribed by the by-laws.

- (5) A Chair of a Disciplinary Appeal Board shall be paid by the Commission such remuneration as is determined by the Remuneration Tribunal.
- (6) A Chair of a Disciplinary Appeal Board shall be paid by the Commission such allowances as are prescribed by the regulations.
- (7) Subsections (5) and (6) have effect subject to the *Remuneration Tribunal Act 1973*.

#### **42 Appeals against decisions made in cases of misconduct**

- (1) Where a decision of a kind prescribed by the by-laws is made in relation to a charge of misconduct, including a charge (whether instituted before or after the commencement of this Act) with respect to misconduct committed before the commencement of this Act, the employee charged with the misconduct may appeal to a Disciplinary Appeal Board against the decision.
- (2) On the hearing of an appeal under subsection (1), a Disciplinary Appeal Board may take evidence on oath or affirmation.
- (3) The by-laws may prescribe the grounds on which, the manner in which, and the time within which, appeals may be made under subsection (1) 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 subsection (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.

#### **43 Witnesses before Disciplinary Appeal Boards**

- (1) The Chair 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

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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 Chair 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, without reasonable excuse, refuse or fail 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 that he was required by the summons to produce.

Penalty: Imprisonment for 6 months.

- (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 Chair of the Board from continuing in attendance, to continue in attendance before the Board;
- as required by the summons.

Penalty: Imprisonment for 6 months.

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- (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: Imprisonment for 6 months.
- (7) The regulations may make provision for and in relation to the payment of expenses to witnesses summoned to attend, or appearing, before a Disciplinary Appeal Board.
- (8) In subsections (1), (3), (4), (5), (6) and (7), references to the Chair of a Disciplinary Appeal Board, and other references to a Disciplinary Appeal Board, include references to a person appointed under subsection (2) to take the evidence of another person in relation to an appeal to a Disciplinary Appeal Board.

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

Where:

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

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

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

#### **45 Superannuation**

- (1) Where a transferred South Australian employee or a transferred Tasmanian employee continues, notwithstanding his appointment to the Railway Service, to be a contributor for State retirement benefits:
  - (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.
- (2) Where a transferred Tasmanian employee continues, notwithstanding his appointment to the Railway Service, to be a public servant for the purposes of the *Public Servants' Retiring and Death Allowances Act 1925* of the State of Tasmania, the Commission may furnish to the Treasurer of that State such information concerning the employee as the Treasurer requests, being information relevant to the calculation of the benefits payable to or in respect of the employee under that Act.
- (3) There shall be paid by the Commission to the Consolidated Revenue Fund, at such times as the Minister for Finance determines, in respect of transferred South Australian employees and transferred Tasmanian employees referred to in subsection (1) and transferred Tasmanian employees referred to in subsection (2), such amounts as the Minister for Finance determines in respect of the future liability of the Commonwealth to make payments relating to State retirement benefits in respect of those employees.
- (4) 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 and continued in existence under the same name by section 10 of the *Retirement Benefits Act 1982* of that State.

**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 1982* or the *Public Servants’ Retiring and Death Allowances Act 1925* of the State of Tasmania.
- (5) A reference in this section to an Act of a State is a reference to the Act as amended and in force from time to time.

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

- (1) Subject to subsection (2), the eligibility of a transferred South Australian employee to be granted a period of long service leave, or of such an employee, or of the dependants of such an employee, to be paid an amount of money in lieu of long service leave, shall be determined:
  - (a) by applying the provisions of the *Long Service Leave (Commonwealth Employees) Act 1976*; or

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- (b) by applying the relevant South Australian long service leave provisions and treating the service of the transferred South Australian employee in the employment of the Commission as service as an Officer for the purposes of those provisions; whichever has the more favourable effect in relation to that employee or his dependants, and a period of long service leave may be granted, or the payment of an amount of money in lieu of long service leave may be authorized, under the *Long Service Leave (Commonwealth Employees) Act 1976*, accordingly.
- (2) For the purposes of subsection (1), the period of long service leave that a transferred South Australian employee would, at any time, but for this subsection, be eligible to be granted under the relevant South Australian long service leave provisions in respect of a period of service is subject to an appropriate reduction in respect of a period of long service leave that has previously been granted to him, or of any amount of money in lieu of long service leave that has previously been paid to him, in respect of any part of that period of service.
- (3) For the purposes of applying the relevant South Australian long service leave provisions to or in respect of a transferred South Australian employee, the Public Service Board and any persons authorized to grant long service leave to that employee, or to authorize a payment of money in lieu of long service leave to or in respect of that employee, under the *Long Service Leave (Commonwealth Employees) Act 1976*, have all the powers conferred by those provisions upon the Public Service Board of the State of South Australia.
- (4) A reference in this section to the relevant South Australian long service leave provisions is a reference to those provisions of the *Public Service Act 1967* of the State of South Australia as in force at 1 March 1978 that relate to long service leave.

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

- (1) If, when a claim for compensation in relation to an injury sustained on or after 1 March 1978 by a transferred South Australian employee is served on the Commission by or on behalf of a person under section 54 of the *Commonwealth Employees' Rehabilitation*

*and Compensation Act 1988*, there is also served on the Commission an election, in accordance with a form prescribed by regulations made under that Act, by or on behalf of the person to have the claim dealt with in accordance with the applied South Australian provisions, that Act applies to and in relation to the claim, subject to this section, as if the applied South Australian provisions were substituted for the provisions of Part II of that Act.

- (2) Where:
- (a) a transferred South Australian employee sustains an injury (in this subsection referred to as the *subsequent injury*) that relates to a previous injury sustained by the employee on or after 1 March 1978; and
  - (b) compensation was paid under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* in respect of that previous injury;  
that Act applies to and in relation to any claim made by or on behalf of the employee in respect of the subsequent injury:
  - (c) if an election was made under subsection (1) in relation to that previous injury (whether or not an election is made in relation to the subsequent injury)—as if the applied South Australian provisions were substituted for Part II of that Act; or
  - (d) if no election was made under subsection (1) in relation to the previous injury but an election is made under that subsection in relation to the subsequent injury—as if that last-mentioned election were of no force or effect.
- (3) For the purposes of subsection (2), an injury shall be taken to relate to a previous injury if it is an injury by way of:
- (a) the aggravation, acceleration, exacerbation, deterioration or recurrence of that previous injury; or
  - (b) the further aggravation, acceleration, exacerbation, deterioration or recurrence of an injury the aggravation, acceleration, exacerbation, deterioration or recurrence of which constituted that previous injury.
- (4) In the application of the modified Commonwealth Employees' Rehabilitation and Compensation Act (in this subsection called *the Act*) in relation to a claim for compensation:

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- (a) unless the contrary intention appears, expressions used in that part of the Act that comprises the applied South Australian provisions have the same respective meanings as they have in the Workers Compensation Act;
  - (b) expressions used in the Act (other than in that part of the Act that comprises the applied South Australian provisions) that are also used in the applied South Australian provisions have the same respective meanings as they have in the applied South Australian provisions; and
  - (c) in that part of the Act that comprises the applied South Australian provisions:
    - (i) a reference to the Court shall be read as a reference to the Commission; and
    - (ii) a reference to a workman shall be read as a reference to a transferred South Australian employee.
- (5) Where:
- (a) claims for compensation in respect of an injury to a transferred South Australian employee that resulted in the employee's death have been served on the Commission by or on behalf of 2 or more persons; and
  - (b) an election has been made under subsection (1) in relation to at least one of those claims and no election has been so made in relation to at least one of those claims;
- then:
- (c) a claim in relation to which no election has been so made shall be determined under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* in its application to that claim as if:
    - (i) no election had been so made in relation to any of the claims referred to in paragraph (a); and
    - (ii) any person who is a dependant of the employee for the purposes of the Workers Compensation Act were a dependant of the employee for the purposes of that first-mentioned Act in its application to that claim;
  - (d) a claim in relation to which an election has been so made shall be determined under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* in its application to that claim as if:

- (i) elections had been so made in relation to all the claims referred to in paragraph (a); and
  - (ii) any person who is a dependant of the employee for the purposes of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* in its application to a claim in relation to which no election has been made under subsection (1) were a dependant of the employee for the purposes of that Act in its application to that claim; and
  - (e) the Commission shall make, under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* in its application to the claims referred to in paragraph (a), one determination in respect of all those claims.
- (6) It is the intention of the Parliament that the modified Commonwealth Employees' Rehabilitation and Compensation Act shall be applied, except where the contrary intention appears in that Act, in such a manner as to impose on the Commission the same liability, as nearly as practicable, to pay compensation in respect of an injury sustained, on or after 1 March 1978, by a transferred South Australian employee (being an injury in relation to which a claim is required to be determined under the modified Commonwealth Employees' Rehabilitation and Compensation Act) as was imposed by the Workers Compensation Act on an employer to whom that Act applied, in respect of a similar injury sustained in similar circumstances by a person who is, within the meaning of that Act, a workman employed by such an employer.
- (7) The power to make regulations conferred by section 122 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* extends, by virtue of this subsection, to the making of regulations for the purposes of this section.
- (7A) The regulations may provide that an amount specified in the Workers Compensation Act or in any regulation or Proclamation under the Act (including an amount specified by virtue of regulations made pursuant to this subsection) shall, for the purposes of this section, be taken to be replaced by such higher amount as is specified in the regulations.
- (8) In this section:

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***applied South Australian provisions*** means the provisions of Parts II, IV and VIII of, and the Second Schedule to, the Workers Compensation Act, and the provisions of any regulations and Proclamations in force immediately before 30 September 1987 for the purposes of those Parts and that Schedule, as modified by:

- (a) regulations made under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* for the purpose of enabling matters connected with the payment of compensation in relation to transferred South Australian employees in accordance with those provisions to be dealt with under Parts I, III, IV, V, VI, VII, IX and X of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*; and
- (b) regulations made under this Act for the purposes of subsection (8).

***Commission*** means the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees established by section 68 of the *Commonwealth Employees Rehabilitation and Compensation Act 1988*.

***modified Commonwealth Employees' Rehabilitation and Compensation Act*** means the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* modified by the substitution of the applied South Australian provisions for Part II of that Act.

***Workers Compensation Act*** means the *Workmen's Compensation Act 1971* of the State of South Australia as amended and in force immediately before 30 September 1987.

**48 Application of certain provisions of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* to employees**

- (1) In the application of sections 20 and 21 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* to and in relation to transferred South Australian employees and transferred Tasmanian employees, references to a superannuation scheme shall be read as including references to schemes for the payment of benefits contained in the *Superannuation Act 1974* of the State of South Australia and the *Superannuation Act 1938*, the *Retirement*

*Benefits Act 1982 and the Public Servants' Retiring and Death Allowances Act 1925 of the State of Tasmania.*

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

#### **48A Transitional provisions**

- (1) In this section:

***commencing day*** means the day on which section 138 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* commences.

***Commission*** has the same meaning as it has in the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*.

***Commissioner*** has the same meaning as it had in the *Compensation (Commonwealth Government Employees) Act 1971* as in force immediately before the commencing day.

***instrument*** means any instrument (including rules, regulations and by-laws) made, granted or issued pursuant to any Act.

***modified 1971 Act*** means the modified Compensation (Commonwealth Government Employees) Act within the meaning of section 47 as in force immediately before the commencing day.

***modified 1988 Act*** means the modified Commonwealth Employees' Rehabilitation and Compensation Act within the meaning of section 47.

- (2) In this section, a reference to a thing done by, or in relation to, the Commissioner, includes a reference to a thing done by, or in relation to, a delegate of the Commissioner.
- (3) Any act or thing done at any time before the commencing day by, or in relation to, the Commissioner, being an act or thing done pursuant to, or in relation to, the functions or powers of the Commissioner under the modified 1971 Act, shall, on and after that day, have the same effect as it would have if it had been done by, or in relation to, the Commission pursuant to, or in relation to, the corresponding functions or powers of the Commission under the modified 1988 Act.

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- (4) Any act or thing done at any time before the commencing day by, or in relation to, the Commonwealth, being an act or thing done under the modified 1971 Act shall, on and after that day, have the same effect as it would have if it had been done by, or in relation to, the Commission pursuant to, or in relation to, the functions or powers of the Commission under the modified 1988 Act.
- (5) Any liability of the Commonwealth to pay compensation or make any other payment to a person under the modified 1971 Act shall, to the extent that it has not been discharged before the commencing day, be deemed to have been incurred by the Commission on that day under the corresponding provision of the modified 1988 Act.
- (6) Any act or thing done at any time before the commencing day by, or in relation to, an employee, being an act or thing done under the modified 1971 Act, shall, on and after that day, have the same effect as it would have if it had been done by, or in relation to, the employee pursuant to, or in relation to, the modified 1988 Act.
- (7) An election served on the Commissioner by a transferred South Australian employee under subsection 47(1) as in force at any time before the commencing day shall be deemed to be an irrevocable election served on the Commission by that employee on that day under subsection 47(1) as in force on that day.
- (8) Where a person was, immediately before the commencing day, entitled to apply to the Administrative Appeals Tribunal under the modified 1971 Act, but had not made such an application before that day, Part VI of the modified 1988 Act applies as if:
  - (a) the person were a claimant under the modified 1988 Act; and
  - (b) the reference in subsection 62(3) of the modified 1988 Act to 30 days after the day on which the determination first came to the notice of the claimant were a reference to 30 days after the commencing day.
- (9) Where, immediately before the commencing day, there were pending in any court or tribunal any proceedings relating to any matter arising under the modified 1971 Act to which the Commonwealth was a party, those proceedings may be continued after the commencing day and, where those proceedings are so continued, the Commission and the Commonwealth shall be parties to those proceedings.



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- (10) A reference in any instrument to the Commissioner shall, in relation to any act or thing done, or to be done, after the commencing day, be read as a reference to the Commission.
- (11) All money and investments held immediately before the commencing day for the benefit of a transferred South Australian employee by the Commissioner under the modified 1971 Act are, by force of this subsection, vested in the Commission and shall be held by the Commission for the benefit of that person.

## Part V—Finance

### 55 Financial policy

- (1) The Commission shall, not later than 60 days before the commencement of each financial year:
  - (a) determine, by instrument in writing, that the financial target of the Commission for the financial year is to be:
    - (ia) a specified rate of return on the Commission's assets; or
    - (i) a specified profit; or
    - (ii) neither a profit nor a loss; or
    - (iii) a specified loss; and
  - (b) inform the Minister, by notice in writing, of the financial target that it has determined for the financial year.
- (2) The Minister may, before the expiration of the period of 60 days after receipt by him of notice under subsection (1) of the financial target that the Commission has determined for the financial year:
  - (a) determine, by instrument in writing, a different financial target for the financial year; and
  - (b) inform the Commission, by notice in writing, of the financial target that he has determined for the financial year and the reasons for his determination.
- (3) Subject to section 6AA and Part VA, the Commission shall pursue a policy in the financial year directed at ensuring that it attains the financial target for the financial year.
- (4) Subject to subsection (6), the Commission shall, whenever it considers it necessary or desirable to do so during the financial year, review the financial results of its operations during the part of the financial year that has elapsed and, if on any such review it appears to the Commission that its progress towards attaining the financial target for the financial year has not been satisfactory, the Commission shall, subject to subsection (5):
  - (a) forthwith consider what specific measures should be adopted by it in order to ensure that it attains the financial target; and
  - (b) inform the Minister, by notice in writing, of the respects in which its progress towards attaining the financial target has

not been satisfactory, of the measures that it proposes to adopt in order to ensure that it attains the financial target and of the effect that, in its opinion, the adoption of those measures will have on the financial results of its operations for the financial year.

- (5) The Commission shall not, for the purposes of subsection (4), propose that the financial target for the financial year should be attained, in whole or in part, by means of moneys appropriated by the Parliament.
- (6) The Commission shall ensure that not more than 6 months elapse between:
  - (a) the commencement of the financial year and the commencement of the first review under subsection (4) in relation to the financial year; or
  - (b) the commencement of a review under subsection (4) in relation to the financial year and the commencement of the next such review.
- (7) A reference in subsection (3), (4) or (5) of this section or in subsection 56(1) to the financial target of the Commission for a financial year is a reference to:
  - (a) the financial target determined by the Commission under subsection (1) for the financial year; or
  - (b) where the Minister has, under subsection (2), determined a different financial target for the financial year—the financial target so determined.

#### **56 Measures to be taken where financial target not attained etc.**

- (1) Where the Commission does not attain, or is of the opinion that it cannot attain, its financial target for a financial year, the Commission shall, subject to subsection (2):
  - (a) forthwith consider what specific measures should be adopted by it in order to meet the amount of the shortfall or expected shortfall, as the case may be, in its financial target for the financial year (in this section referred to as the *financial target shortfall*); and
  - (b) not later than 60 days after the end of the financial year or its forming that opinion, as the case may be, inform the Minister, by notice in writing, of the measures that it

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proposes to adopt in order to meet the financial target shortfall.

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

**57 Payment of amounts to the Commonwealth**

- (1) The Minister for Finance may give the Commission a written direction requiring the Commission to pay a specified amount to the Commonwealth before a specified time.
- (2) The Commission must comply with a direction under subsection (1).

**60 Application of money**

- (1) The moneys of the Commission shall be applied only:
  - (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Commission in the performance of its functions and duties and the exercise of its powers;
  - (b) in payment of the remuneration and allowances payable to persons appointed under Part III; and
  - (c) in making payments to the Commonwealth as provided by this Act.
- (2) Subsection (1) does not prevent investment of surplus money of the Commission under section 19 of the *Commonwealth Authorities and Companies Act 1997*.

**61 Borrowings from Commonwealth**

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

**62 Borrowings otherwise than from Commonwealth**

- (1) Subject to subsections (3) and (4), the Commission may borrow money from persons other than the Commonwealth.

- (2) Money may be borrowed wholly or partly in foreign currency.
- (3) The Minister for Finance may give the Commission a written direction requiring the Commission not to enter into a loan.
- (4) The Commission must comply with a direction under subsection (3).

### **63 Guarantee of borrowings**

- (1) The Treasurer may, on behalf of the Commonwealth, enter into a contract guaranteeing the performance by the Commission of obligations incurred by it:
  - (a) under a borrowing made under section 62; or
  - (b) under any other contract, arrangement, agreement or obligation.
- (2) If the Treasurer determines, in writing, that obligations incurred by the Commission under section 62 or under any other contract, arrangement, agreement or obligation are guaranteed by the Commonwealth, the obligations are, by force of this subsection, guaranteed by the Commonwealth.
- (3) The Treasurer may, in writing, delegate to the holder of an office in the Department of the Treasury all or any of the Treasurer's powers under this section.
- (4) A contract under subsection (1) may include:
  - (a) a provision agreeing that proceedings under the contract may be taken in courts of a foreign country; or
  - (b) a provision waiving the immunity of the Commonwealth from suit in courts of a foreign country.

### **64 Commission may give security**

The Commission may give security over the whole or any part of its assets for:

- (a) the due performance of obligations incurred by it under section 62; or
- (b) the payment to the Commonwealth of amounts equal to any amounts that the Commonwealth may become liable to pay under obligations incurred by the Commonwealth under section 63.

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**64A Hedging through currency contracts etc.**

- (1) Subject to subsection (4), the Commission may enter into and deal with contracts to which this section applies for hedging purposes in relation to:
- (a) a borrowing, or a proposed borrowing, of money by the Commission; or
  - (b) an investment of money by the Commission; or
  - (c) commodity purchases by the Commission.

Note: for *contracts to which this section applies* see subsection (6).

- (2) The Minister may, by written determination, set guidelines for the exercise by the Commission of its power under subsection (1) and must give the Commission a copy of each determination made.
- (3) Without limiting subsection (2), the guidelines may provide that:
- (a) the Commission is not to enter into or deal with contracts of a particular kind; or
  - (b) the Commission is to enter into or deal with contracts of a particular kind only if the contract relates to specified matters.

Examples of paragraph (3)(b) guidelines:

guidelines that provided the Commission is to enter into commodity futures only if the commodity is a specified commodity or a commodity that has a specified link with the Commission's operations.

- (4) The Commission must not enter into or deal with a contract to which this section applies contrary to any guidelines in force under subsection (2).
- (5) A contract is taken to be entered into or dealt with for hedging purposes only if the contract is entered into or dealt with for the purposes of:
- (a) reducing the risk of adverse variations in:
    - (i) the costs of a borrowing, or a proposed borrowing, of money by the Commission; or
    - (ii) the revenue obtainable by the Commission from the investment of money of the Commission; or
    - (iii) the costs of commodities purchased by the Commission; or
  - (b) maintaining the value of:

- (i) investments made by the Commission; or
  - (ii) property used as security for a borrowing, or a proposed borrowing, by the Commission.
- (6) This section applies to contracts of the following kinds:
- (a) currency contracts;
  - (b) interest rate contracts;
  - (c) futures contracts;
  - (d) contracts relating to:
    - (i) dealings known as currency swaps; or
    - (ii) dealings known as interest rate swaps; or
    - (iii) dealings known as commodity swaps;
  - (e) contracts relating to 2 or more of the dealings referred to in paragraph (d);
  - (f) options (including futures options);
  - (g) contracts of a kind approved by the Minister in writing.

## **67 Liability to taxation**

- (1) Subject to subsections (1A) and (4), the Commission is not subject to taxation under the laws of the Commonwealth or of a State or Territory.
- (1A) Subsection (1) does not apply to a law of a State or Territory relating to pay-roll tax.
- (2) Where the Treasurer so determines by notice published in the *Gazette*, stamp duty, or any similar tax, is not payable by the Commission or any other person under a law of the Commonwealth or of a State or Territory in respect of:
  - (a) a security dealt with by the Commission;
  - (b) the issue, redemption, transfer, sale, purchase, resale, acquisition or discounting of such security by the Commission or any other person, not including a transaction done without consideration or for an inadequate consideration;
  - (c) any other transaction done for the purposes of a borrowing, or a raising of moneys otherwise than by borrowing, by the Commission; or

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- (d) any other document executed by or on behalf of the Commission for the purposes of a borrowing, or a raising of moneys otherwise than by borrowing, by the Commission.
- (3) A determination may be made under subsection (2) in relation to:
  - (a) a particular security, transaction or document; or
  - (b) securities, transactions or documents included in a class of securities, transactions or documents, as the case may be.
- (4) Subject to subsection (2), the regulations may provide that subsection (1) does not apply in relation to a specified law of the Commonwealth or of a State or Territory or laws included in a class of laws of the Commonwealth or of a State or Territory.
- (5) If regulations made by virtue of subsection (4) provide that subsection (1) does not apply in relation to the laws of the Commonwealth that impose income tax, the Commission shall be deemed not to be a public authority for the purposes of paragraph 23(d) of the *Income Tax Assessment Act 1936* or section 50-25 of the *Income Tax Assessment Act 1997*.
- (6) If regulations made by virtue of subsection (4) provide that subsection (1) does not apply in relation to the laws of the Commonwealth that impose sales tax, the Commission shall be deemed not to be a public transport authority for the purposes of item 77 in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935* or Item 64 in Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*.



## **Part VA—Transfer of assets of Commission**

### **Division 1—Preliminary**

#### **67AA Purpose of Part**

The purpose of this Part is to provide for the winding down of the operations of the Commission prior to the Commission being abolished by the repeal of this Act.

#### **67AB Simplified outline**

The following is a simplified outline of this Part:

- This Part sets up a scheme under which assets of the Commission may be transferred to other persons.
- The Commission may be directed to sell or transfer any of its assets.
- The assets, contracts and liabilities of the Commission may be transferred by declaration.
- Commonwealth guaranteed liabilities may, however, only be transferred to the Commonwealth.
- If assets, contracts or liabilities (other than Commonwealth guaranteed liabilities) of the Commission have been transferred to the Commonwealth, the assets, contracts or liabilities may be transferred by the Commonwealth to other persons.
- The Commission may be required to pay to the Commonwealth an amount equal to any consideration received for the sale or transfer of any of the Commission's assets or contracts.

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- Certain transactions under this Part are exempt from stamp duty and similar taxes.
- The Commonwealth may take over obligations of the Commission.
- The Commission, the Commissioners, and certain other persons, may be required to assist the Commonwealth or the Commission in connection with the implementation of this Part.
- The Federal Court may grant injunctions relating to the enforcement of this Part.
- Provision is made for compensation for acquisition of property.

**67AC Interpretation**

In this Part, unless the contrary intention appears:

*asset* means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

*Commonwealth guaranteed liability* means a liability, and any other related obligations, whose satisfaction or performance is guaranteed by the Commonwealth.

*contract* includes:

- (a) a deed; and
- (b) a deed poll.

*Federal Court* means the Federal Court of Australia.

*instrument* includes a document.

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***land registration official***, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

***liability*** means any liability, duty or obligation, whether actual, contingent or prospective.

***obligation*** means any obligation whether actual, contingent or prospective.

## **Division 2—Transfer of assets, liabilities, rights and obligations of Commission**

### **67AD Minister for Finance may direct Commission to sell or transfer assets**

- (1) The Minister for Finance may, by written notice given to the Commission, direct the Commission to sell or transfer a specified asset of the Commission.

Note: An asset may be specified by name, by inclusion in a specified class or in any other way.

- (2) The direction may impose on the Commission requirements that are ancillary or incidental to the sale or transfer, including (but not limited to) any of the following requirements:
- (a) a requirement that the sale or transfer must be to a specified person;
  - (b) a requirement that the sale or transfer must be completed before a specified time;
  - (c) a requirement that the sale or transfer must be undertaken in a specified manner;
  - (d) in the case of a sale—a requirement that the asset must be sold for a price that is within a specified range;
  - (e) in the case of a sale—a requirement that the asset must be marketed, and that the sale must be undertaken, through a specified agent.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

- (3) The Commission must comply with the direction.
- (4) This section does not limit section 67AE or 67AF.

### **67AE Transfer of assets by declaration**

- (1) The Minister for Finance may, by writing, make any or all of the following declarations in relation to an asset of the Commission:
- (a) a declaration that a specified asset vests in a specified person at a specified time without any conveyance, transfer or assignment;

- (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in a specified person as if a reference in the instrument to the Commission were a reference to the person;
- (c) a declaration that a specified person becomes the Commission's successor in law in relation to a specified asset immediately after the asset vests in the person.

Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (2) A declaration under subsection (1) has effect accordingly.
- (3) A copy of a declaration under subsection (1) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (4) Subsection (1) does not prevent the Commission from transferring an asset to a person otherwise than under that subsection unless the transfer would be contrary to a declaration made under that subsection.

#### **67AF Transfer of contractual rights and obligations by declaration**

- (1) The Minister for Finance may, by writing, declare that the Commission's rights and obligations under a specified contract to which the Commission is a party:
  - (a) cease to be rights and obligations of the Commission at a specified time; and
  - (b) become rights and obligations of a specified person at that time.

Note: A right or obligation may be specified by name, by inclusion in a specified class or in any other way.

- (2) The Minister for Finance may, by writing, declare that a specified contract continues to have effect after a specified time as if a reference in the contract to the Commission were a reference to a specified person.
- (3) The Minister for Finance may, by writing, declare that a specified instrument relating to a specified contract continues to have effect after the Commission's rights and obligations under the contract become rights and obligations of a specified person, as if a reference in the instrument to the Commission were a reference to the person.

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- (4) The Minister for Finance may, by writing, declare that a specified person becomes the Commission's successor in law, in relation to the Commission's rights and obligations under a specified contract, immediately after the Commission's rights and obligations under the contract become rights and obligations of the person.
- (5) A declaration under this section has effect accordingly.
- (6) A copy of a declaration under this section is to be published in the *Gazette* within 14 days after the making of the declaration.
- (7) This section does not, by implication, limit section 67AE.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

**67AG Transfer of liabilities by declaration**

- (1) The Minister for Finance may, by writing, make any or all of the following declarations in relation to a liability of the Commission other than a Commonwealth guaranteed liability:
  - (a) a declaration that a specified liability ceases to be a liability of the Commission and becomes a liability of a specified person at a specified time;
  - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of a specified person as if a reference in the instrument to the Commission were a reference to the person;
  - (c) a declaration that a specified person becomes the Commission's successor in law in relation to a specified liability immediately after the liability becomes a liability of the person.
- (2) A declaration under subsection (1) has effect accordingly.
- (3) A copy of a declaration under subsection (1) is to be published in the *Gazette* within 14 days after the making of the declaration.

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.

**67AH Commonwealth guaranteed liabilities of the Commission**

- (1) The Minister for Finance may, by written notice, declare that specified Commonwealth guaranteed liabilities of the Commission cease to be liabilities of the Commission and become liabilities of the Commonwealth on a specified day.
- (2) A declaration under subsection (1) has effect accordingly.
- (3) The Treasurer may authorise the payment of money to discharge the Commonwealth guaranteed liabilities that become liabilities of the Commonwealth, whether by ending those liabilities or otherwise.
- (4) The Consolidated Revenue Fund is appropriated for payments under this section.

**67AJ Consideration**

- (1) A declaration may be made under this Division, whether or not the declaration is associated with the giving of consideration.
- (2) This section is enacted for the avoidance of doubt.

## Division 3—Contracts

### 67AK Commission may enter into contracts

The Commission may, subject to sections 6AA and 67AL, subsection 55(3) and this Part, enter into contracts for the purposes of this Part.

### 67AL Minister for Finance may direct Commission to enter into contracts

- (1) The Minister for Finance may, by written notice given to the Commission, direct the Commission to enter into specified contracts.

Note: A contract may be specified by name, by inclusion in a specified class or in any other way.

- (2) The direction may impose on the Commission requirements that are ancillary or incidental to the contract, including (but not limited to) either or both of the following requirements:
  - (a) a requirement that the contract must be with a specified person;
  - (b) a requirement that the contract must be entered into before a specified time.
- (3) The Commission must comply with the direction.



## **Division 4—Transfers by the Commonwealth**

### **67AM Transfer of assets**

- (1) The Minister for Finance may, by writing, make any or all of the following declarations in relation to an asset that has vested in the Commonwealth under section 67AE:
  - (a) a declaration that a specified asset vests in a specified person at a specified time without any conveyance, transfer or assignment;
  - (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in a specified person as if a reference in the instrument to the Commonwealth were a reference to the person;
  - (c) a declaration that a specified person becomes the Commonwealth's successor in law in relation to a specified asset immediately after the asset vests in the person.

Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (2) A declaration under subsection (1) has effect accordingly.
- (3) A copy of a declaration under subsection (1) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (4) Subsection (1) does not prevent the Commonwealth from transferring an asset to a person otherwise than under that subsection.

### **67AN Transfer of contractual rights and obligations**

- (1) This section applies to a contract where rights and obligations under the contract became rights and obligations of the Commonwealth under section 67AF.
- (2) The Minister for Finance may, by writing, declare that the Commonwealth's rights and obligations under a specified contract:
  - (a) cease to be rights and obligations of the Commonwealth at a specified time; and
  - (b) become rights and obligations of a specified person at that time.

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- (3) The Minister for Finance may, by writing, declare that a specified contract continues to have effect after a specified time as if a reference in the contract to the Commonwealth were a reference to a specified person.
- (4) The Minister for Finance may, by writing, declare that a specified instrument relating to a specified contract continues to have effect, after the Commonwealth's rights and obligations under the contract become rights and obligations of a specified person, as if a reference in the instrument to the Commonwealth were a reference to the person.
- (5) The Minister for Finance may, by writing, declare that a specified person becomes the Commonwealth's successor in law, in relation to the Commonwealth's rights and obligations under a specified contract, immediately after the Commonwealth's rights and obligations under the contract become rights and obligations of the person.
- (6) A declaration under this section has effect accordingly.
- (7) A copy of a declaration under this section is to be published in the *Gazette* within 14 days after the making of the declaration.
- (8) This section does not, by implication, limit section 67AM.

Note: A contract or instrument may be specified by name, by inclusion in a specified class or in any other way.

**67AP Transfer of liabilities**

- (1) This section applies to a liability that became a liability of the Commonwealth under section 67AG.
- (2) The Minister for Finance may, by writing, make any or all of the following declarations:
  - (a) a declaration that a specified liability ceases to be a liability of the Commonwealth and becomes a liability of a specified person at a specified time;
  - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of a specified person as if a reference in the instrument to the Commonwealth were a reference to the person;

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- (c) a declaration that a specified person becomes the Commonwealth's successor in law in relation to a specified liability immediately after the liability becomes a liability of the person.
- (3) A declaration under subsection (2) has effect accordingly.
- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.

**67AQ Consideration**

- (1) A declaration may be made under this Division, whether or not the declaration is associated with the giving of consideration.
- (2) This section is enacted for the avoidance of doubt.

## **Division 5—Proceeds of asset transfers to be paid to the Commonwealth**

### **67AR Proceeds of asset transfers to be paid to the Commonwealth**

- (1) The Minister for Finance may, by written notice given to the Commission, direct that, if the Commission receives any consideration in respect of:
  - (a) the sale or transfer by the Commission of a specified asset; or
  - (b) the transfer of the Commission's rights and obligations under a specified contract;

the Commission must pay to the Commonwealth a specified amount. The amount specified must not be more than the amount of the consideration.

Note: An asset or contract may be specified by name, by inclusion in a specified class or in any other way.

- (2) The Commission must comply with the direction.
- (3) This section does not, by implication, limit section 57.

## **Division 6—Tax exemption**

### **67AS Exemption from stamp duty and other taxes**

- (1) Subject to subsection (2), stamp duty or other tax is not payable under a law of the Commonwealth, a State or a Territory in respect of:
  - (a) an exempt matter; or
  - (b) anything done (including a transaction entered into or an instrument made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.
- (2) The Minister for Finance may, by written notice, declare that subsection (1) does not apply in respect of a specified exempt matter.
- (3) A declaration under subsection (2) has effect accordingly.
- (4) In this section:

*exempt matter* means:

- (a) the sale or transfer by the Commission of an asset in accordance with a direction under section 67AD; or
- (b) an agreement relating to a sale or transfer covered by paragraph (a); or
- (c) the receipt of money by the Commission, or by a person acting on behalf of the Commission, in respect of a sale or transfer covered by paragraph (a); or
- (d) a transfer under section 67AE, 67AF or 67AG; or
- (e) an agreement relating to a transfer covered by paragraph (d);  
or
- (f) the receipt of money by the Commission, or by a person acting on behalf of the Commission, in respect of a transfer covered by paragraph (d); or
- (g) the entering into of a contract by the Commission under section 67AK or in accordance with a direction under section 67AL; or

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- (h) the receipt of money by the Commission, or by a person acting on behalf of the Commission, in respect of a contract covered by paragraph (g); or
- (i) a transfer under section 67AM, 67AN or 67AP; or
- (j) an agreement relating to a transfer covered by paragraph (i); or
- (k) the receipt of money by the Commonwealth, or by a person acting on behalf of the Commonwealth, in respect of a transfer covered by paragraph (i); or
- (l) the sale or transfer by the Commonwealth of an asset that has vested in the Commonwealth under section 67AE; or
- (m) an agreement relating to a sale or transfer covered by paragraph (l); or
- (n) the receipt of money by the Commonwealth, or by a person acting on behalf of the Commonwealth, in respect of a sale or transfer covered by paragraph (l); or
- (o) the entering into of a contract by the Minister for Finance for the sale of shares referred to in section 67AZN; or
- (p) the receipt of money by the Minister for Finance, or by a person acting on behalf of the Minister for Finance, in respect of a contract covered by paragraph (o).

## **Division 7—Commonwealth takeover of contractual rights and obligations and other liabilities**

### **67AT Commonwealth takeover of certain contractual rights and obligations and other liabilities of the Commission**

- (1) This section applies to a contractual right or obligation or other liability of the Commission other than a liability to which section 67AU applies.
- (2) The Minister for Finance may, on the Commonwealth's behalf, enter into an agreement to take over a contractual right or obligation or other liability to which this section applies.

### **67AU Commonwealth takeover of certain liabilities of the Commission**

- (1) This section applies to a liability of the Commission under a borrowing transaction.
- (2) The Treasurer may, on the Commonwealth's behalf, enter into an agreement to take over a liability to which this section applies.
- (3) For the purposes of this section, a ***borrowing transaction*** is:
  - (a) a loan; or
  - (b) any other transaction that gives rise to a borrowing.
- (4) For the purposes of this section, borrowing includes borrowing, or otherwise raising money, by dealing in securities.
- (5) For the purposes of this section, the obtaining of credit is taken to be a borrowing of an amount equal to the value of the credit obtained.

### **67AV Authorisation of payments**

If the Treasurer enters into an agreement under subsection 67AU(2), the Treasurer may authorise the payment of money to discharge the Commonwealth's obligations under the agreement, whether by terminating those obligations or otherwise.

**Part VA** Transfer of assets of Commission

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**67AW Appropriation**

A payment under section 67AV is to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

**67AX Application of the *Loans Securities Act 1919***

Sections 5A, 5B, 5C and 5D (other than paragraphs (1)(c) and (2)(c)) of the *Loans Securities Act 1919* apply in relation to a liability that is taken over by the Commonwealth under section 67AU as if that liability were a borrowing of money outside Australia:

- (a) that the Treasurer was authorised to make on behalf of the Commonwealth; and
- (b) that the Treasurer made accordingly.



## **Division 8—Commission and others to assist the implementation of this Part**

### **67AY Implementation of this Part**

A reference in this Division to the *implementation of this Part* includes a reference to the formulation of the policies and approaches to be adopted by the Minister for Finance for the purposes of this Part.

### **67AZ Assistance given by Commission and Commissioners in connection with the implementation of this Part**

- (1) The Commission may, on the Commission's own initiative, assist the Commonwealth in connection with the implementation of this Part.
- (2) A Commissioner may, on his or her own initiative, assist the Commonwealth or the Commission in connection with the implementation of this Part.
- (3) The Commission must, when requested in writing by the Minister for Finance to do so, assist the Commonwealth in connection with the implementation of this Part. The assistance is to be given within the period, and in the form and manner, specified in the request.
- (4) A Commissioner must, when requested in writing by the Minister for Finance to do so, assist the Commonwealth or the Commission in connection with the implementation of this Part. The assistance is to be given within the period, and in the form and manner, specified in the request.
- (5) To avoid doubt, the giving of assistance as mentioned in subsection (1), (2), (3) or (4) or the making of a request under subsection (3) or (4) does not result in a contravention of, or give rise to a liability or remedy under a rule of common law or equity (other than a rule of administrative law).

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**67AZA Giving of assistance—ancillary provisions**

- (1) The assistance mentioned in subsection 67AZ(1), (2), (3) or (4) may take the form of:
  - (a) the giving of information; or
  - (b) the giving of financial assistance; or
  - (c) the giving of a financial benefit to a related party; or
  - (d) the provision, by a Commissioner or by employees of the Commission, of facilities, information and other assistance in connection with the conduct of:
    - (i) a due diligence procedure or a similar process; or
    - (ii) a market briefing or a similar process; or
  - (e) the entering into of an agreement with the Commonwealth or the Commission.
- (2) Subsection (1) does not, by implication, limit the forms in which assistance may be given.
- (3) Section 67AZ does not, by implication, limit:
  - (a) the executive power of the Commonwealth to enter into an agreement; or
  - (b) the power of the Commission to enter into an agreement; or
  - (c) the capacity of the Commission or a Commissioner to enter into an agreement with the Commonwealth; or
  - (d) the capacity of a Commissioner to enter into an agreement with the Commission.
- (4) Section 67AZ extends to the giving of assistance outside Australia, whether or not in a foreign country.

**67AZB Use of information by the Commonwealth or the Commission**

- (1) This section applies to information obtained under section 67AZ.
- (2) The Commonwealth, the Commission, or an associated person, may use the information for a purpose in connection with the implementation of this Part.
- (3) The Commonwealth, the Commission, or an associated person, may disclose the information for a purpose in connection with the implementation of this Part.

- (4) To avoid doubt, the use or disclosure of information as mentioned in subsection (2) or (3) does not result in a contravention of, or give rise to a liability or remedy under a rule of common law or equity (other than a rule of administrative law).
- (5) In this section:
- associated person*** means:
- (a) a Minister; or
  - (b) an individual who holds an office under, or is employed by, the Commonwealth; or
  - (c) a person appointed or engaged under the *Public Service Act 1999*; or
  - (d) a person who performs services for or on behalf of the Commonwealth in connection with the implementation of this Part; or
  - (e) a Commissioner; or
  - (f) an officer or employee of the Commission; or
  - (g) a person who performs services for or on behalf of the Commission in connection with the implementation of this Part.

#### **67AZC Agreements relating to the protection of information**

- (1) The Minister for Finance may, on behalf of the Commonwealth, enter into an agreement with a person relating to the protection of information:
- (a) that is obtained under section 67AZ; and
  - (b) the publication of which might be expected to prejudice substantially a person's commercial interests.
- (2) An agreement under subsection (1) may be enforced as if it were a contract.
- (3) Subsection (1) does not, by implication, limit the executive power of the Commonwealth to enter into agreements.
- (4) The Commission may enter into an agreement with a person relating to the protection of information:
- (a) that is obtained under section 67AZ; and
  - (b) the publication of which might be expected to prejudice substantially a person's commercial interests.

**Part VA** Transfer of assets of Commission

**Division 8** Commission and others to assist the implementation of this Part

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- (5) An agreement under subsection (4) may be enforced as if it were a contract.
- (6) Subsection (4) does not, by implication, limit the power of the Commission to enter into agreements.

## **Division 9—Injunctions**

### **67AZD Injunctions**

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Part, the Federal Court may, on the application of the Minister for Finance, grant an injunction:
  - (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

#### *Performance injunctions*

- (2) If:
  - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is, or would be, a contravention of this Part;the Federal Court may, on the application of the Minister for Finance, grant an injunction requiring the person to do that act or thing.

### **67AZE Interim injunctions**

#### *Grant of interim injunction*

- (1) If an application is made to the court for an injunction under section 67AZD, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

#### *No undertakings as to damages*

- (2) The court is not to require an applicant for an injunction under section 67AZD, as a condition of granting an interim injunction, to give any undertakings as to damages.

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**67AZF Discharge etc. of injunctions**

The court may discharge or vary an injunction granted under this Division.

**67AZG Certain limits on granting injunctions not to apply**

*Restraining injunctions*

- (1) The power of the court under this Division to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
  - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

*Performance injunctions*

- (2) The power of the court under this Division to grant an injunction requiring a person to do an act or thing may be exercised:
  - (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

**67AZH Other powers of the court unaffected**

The powers conferred on the court under this Division are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

## Division 10—Miscellaneous

### 67AZJ Transfers of Commission land may be registered

- (1) This section applies if:
  - (a) any right, title or interest in particular land vests in a person under section 67AE or 67AM; and
  - (b) there is lodged with a land registration official a certificate that:
    - (i) is signed by the Minister for Finance, or a person authorised by the Minister for Finance, in writing, for the purposes of this section; and
    - (ii) identifies the land, whether by reference to a map or otherwise; and
    - (iii) states that the right, title or interest has become vested in the person under section 67AE or 67AM, as the case requires.
- (2) The land registration official may:
  - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
  - (b) deal with, and give effect to, the certificate.
- (3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate, and to have been properly given, unless the contrary is established.

### 67AZK This Part does not modify registers kept by land registration officials

This Part, in so far as it provides for the interpretation of references in other instruments, does not modify any register kept by a land registration official under a law of a State or Territory.

### 67AZL *Lands Acquisition Act 1989* does not apply to this Part

The *Lands Acquisition Act 1989* does not apply in relation to anything done under this Part.



### **67AZM Certificates in relation to assets other than land**

- (1) This section applies if:
  - (a) an asset other than land vests in a specified transferee under section 67AE or 67AM; and
  - (b) there is lodged with an assets official a certificate that:
    - (i) is signed by the Minister for Finance, or a person authorised by the Minister for Finance, in writing, for the purposes of this section; and
    - (ii) identifies the asset; and
    - (iii) states that the asset has become vested in the specified transferee under section 67AE or 67AM, as the case requires.
- (2) The assets official may:
  - (a) deal with, and give effect to, the certificate as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind; and
  - (b) make such entries in the register as are necessary having regard to the effect of section 67AE or 67AM.
- (3) A document that appears to be a certificate under subsection (1) is taken to be such a certificate and to have been properly given unless the contrary is established.
- (4) In this section:

*assets official* means the person or authority who, under a law of the Commonwealth, a State or a Territory, has responsibility for keeping a register in relation to assets of the kind concerned.

### **67AZN Minister may sell shares in sale company**

To avoid doubt, if the Commonwealth owns shares in a company that is established for purposes related to the purposes of this Part, the Minister for Finance may, on behalf of the Commonwealth, enter into contracts to sell the shares.

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**67AZP Legislative Instruments Act does not apply to this Part**

To avoid doubt, an instrument made under this Part is not taken to be a legislative instrument for the purposes of the *Legislative Instruments Act 1997*.

**67AZQ Operation of *Australian Land Transport Development Act 1988***

For the purpose of paragraph 32(1)(n) of the *Australian Land Transport Development Act 1988*, where the Commission disposes of an asset under this Part, the Commission is taken to have paid to the Commonwealth an amount equal to the greater of the proceeds of the sale or disposal and the market value of the asset.

**67AZR Minister may enter into certain agreements with States**

- (1) The Minister may, by written notice, enter into one or more agreements on behalf of the Commonwealth, with South Australia that:
  - (a) terminates or varies the agreements contained in any of the following Acts:
    - (i) *Port Augusta to Whyalla Railway Act 1970*;
    - (ii) *Tarcoola to Alice Springs Railway Act 1974*;
    - (iii) *Railways Agreement (South Australia) Act 1975*;
    - (iv) *Railway Agreement (Adelaide to Crystal Brook Railway) Act 1980*; or
  - (b) provides for the transfer to South Australia of the whole or any part of land owned by the Commission or the Commonwealth that is located in South Australia and that is used for purposes related to railways; or
  - (c) provides for matters that are incidental to transfers covered by paragraph (b); or
  - (d) provides for matters that are incidental to the purposes of this Part; or
  - (e) authorises the performance and observance by the Commonwealth and by the Commission of the new agreements.

- (2) The Minister may, by written notice, enter into one or more agreements on behalf of the Commonwealth, with Tasmania that:
  - (a) terminates or varies the agreement contained in the *Railways (Tasmania) Act 1975*; or
  - (b) provides for the transfer to Tasmania of the whole or any part of land owned by the Commission or the Commonwealth that is located in Tasmania that is used for purposes related to railways; or
  - (c) provides for matters that are incidental to transfers covered by paragraph (b); or
  - (d) provides for matters that are incidental to the purposes of this Part; or
  - (e) authorises the performance and observance by the Commonwealth and by the Commission of the new agreements.
- (3) A notice by the Minister under subsection (1) or (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **67AZS Compensation—constitutional safety net**

- (1) If:
  - (a) apart from this section, the operation of this Part would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.
- (3) Any damages or compensation recovered, or other remedy given, in a proceeding begun otherwise than under this section must be taken into account in assessing compensation payable in a proceeding begun under this section and arising out of the same event or transaction.

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(4) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**67AZT Transfer of pending proceedings**

(1) This section applies if, as a result of a declaration made by the Minister for Finance under this Act, a person (the successor) becomes the successor in law of another person (the original person) at a particular time in relation to a particular asset, liability, right, benefit or obligation.

(2) If any proceedings to which the original person was a party:

(a) were pending in any court or tribunal immediately before that time; and

(b) related, in whole or in part, to the asset, liability, right, benefit or obligation, as the case may be;

then, unless the Minister for Finance otherwise determines in writing in relation to the proceedings, the successor is, by force of this subsection, substituted for the original person as a party to the proceedings to the extent to which the proceedings relate to the asset, liability, right, benefit or obligation, as the case requires.

**67AZU Operation of this Part does not place a person in breach of contract etc.**

To avoid doubt, the operation of this Part is not to be regarded as:

(a) placing a person in breach of contract or confidence; or

(b) otherwise making a person guilty of a civil wrong; or

(c) placing a person in breach of, or constituting a default under, any Act or other law or any provision in an agreement, arrangement or understanding including, but not limited to, any contractual provision prohibiting, restricting or regulating:

(i) the assignment or transfer of any asset, liability, right or obligation; or

(ii) the disclosure of any information; or

- (d) releasing any surety from any of the surety's obligations in relation to a liability or obligation that is transferred under a declaration made under this Part; or
- (e) fulfilling any condition which:
  - (i) allows a person to terminate any agreement or obligation; or
  - (ii) modifies the operation or effect of any agreement; or
  - (iii) requires any money to be paid before its stated maturity.

#### **67AZV Delegation**

- (1) The Minister for Finance may, by writing, delegate to:
  - (a) the Secretary to the Department of Finance; or
  - (b) the Chief Executive of the Office of Asset Sales; or
  - (c) an SES employee or acting SES employee, whether or not in the Department of Finance;

all or any of the functions and powers conferred on the Minister for Finance by this Part.

#### **67AZW Commonwealth records**

- (1) This Part does not authorise a Commonwealth record (within the meaning of the *Archives Act 1983*) to be transferred or otherwise dealt with except in accordance with the provisions of that Act.
- (2) A Commonwealth record (within the meaning of the *Archives Act 1983*) must not be transferred to a person under this Part unless the Australian Archives has given permission under paragraph 24(2)(b) of the *Archives Act 1983* or the record is covered by a determination under section 29 of that Act.

#### **67AZX This Part does not authorise the imposition of taxation**

This Part does not authorise the imposition of taxation within the meaning of section 55 of the Constitution.

## Part VI—Miscellaneous

### 67A Extra matters to be included in annual report

- (2) The Commission's annual report must also:
- (a) include particulars of each direction given to the Commission by the Minister under subsection 19(2) that is applicable to the year; and
  - (aa) include a summary of:
    - (i) notices given to the Commission in that financial year under subsection 20A(1); and
    - (ii) action taken by the Commission, in that financial year, because of notices given to the Commission under subsection 20A(1); and
  - (b) deal specifically with the effect on its operations during the year of each such direction under subsection 19(2); and
  - (c) specify the financial target determined by it under subsection 55(1) for the year; and
  - (d) if the Minister has, under subsection 55(2), determined a different financial target for the year—specify the financial target determined by the Minister and set out the reasons given to the Commission by the Minister for the determination; and
  - (e) include particulars of:
    - (i) companies that it formed, and companies in whose formation it participated, during the year; and
    - (ii) partnerships that it entered into during the year; and
    - (iii) joint ventures, and arrangements for the sharing of profits, that it entered into during the year; and
  - (f) include information relating to shares and securities that it subscribed for, purchased or disposed of during the year.
- (3) The financial statements in the annual report must show separately the financial effect on the Commission's operations of each direction that:
- (a) was given to the Commission by the Minister under subsection 19(2); and

(b) was applicable to the year to which the report relates.

### **68 Closing of railways**

- (1) The Minister may, on the recommendation of the Commission, authorize the Commission to close any railway operated by the Commission.
- (2) The Minister shall cause a copy of each authorization given under subsection (1) to be published in the *Gazette*.

### **69 Reports of accidents etc. to be supplied to Minister**

- (1) Where:
  - (a) an accident:
    - (i) resulting in loss of human life or serious injury to any person; or
    - (ii) involving a train carrying passengers; or
  - (b) any other serious incident;occurs on a railway owned or operated by the Commission, the Commission shall forthwith furnish to the Minister a report, in writing, of the circumstances of the accident or incident, as the case may be.
- (2) The Commission shall, as soon as practicable after the expiration of the period of 6 months ending on 30 June, and of the period of 6 months ending on 31 December, in each year, furnish to the Minister a report, in writing, with respect to accidents that have occurred, during the period, on railways owned or operated by it.
- (3) A report under subsection (2) shall be in such form as the Minister directs by instrument in writing.

### **70 Inquiries into accidents etc.**

- (1) Where:
  - (a) an accident:
    - (i) resulting in loss of human life or serious injury to any person; or
    - (ii) involving a train carrying passengers; or

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- (b) any other serious incident;  
occurs on a railway owned or operated by the Commission, the Minister may, by instrument in writing, establish a Board of Inquiry to inquire into, and report to him on, the circumstances of the accident or incident, as the case may be, and such other matters relating to the accident or incident, as the case may be, as are specified in the instrument.
- (2) A Board of Inquiry shall be constituted in such manner as is specified in the instrument by which it is established.
- (3) The provisions of the *Royal Commissions Act 1902* apply, with such modifications (if any) as are prescribed by the regulations, to and in relation to a Board of Inquiry as if it were a Royal Commission within the meaning of that Act.

**72 Commission not common carrier**

The Commission is not a common carrier.

**73 Service of notices**

- (1) Subject to this section, a notice required under this Act to be given to a person shall be served either personally or by post on the person.
- (2) A notice under this Act that is posted, as a letter, to a person at the last address of the person known to the Commission shall, for the purposes of the application of section 29 of the *Acts Interpretation Act 1901* in relation to subsection (1), be deemed to be properly addressed to the person.
- (3) Where:
- (a) the Commission is unable, after diligent inquiry, to ascertain the identity of the owner of any land; or
  - (b) service of a notice under this Act on the owner of any land cannot be effected either personally or by post;
- service of the notice may be effected by causing a copy of the notice to be published in a newspaper circulating in the district in which the land, or part of the land, is situated and:
- (c) if the land is occupied—giving a copy of the notice to the occupier; or



- (d) if the land is not occupied—affixing, if practicable, a copy of the notice to a conspicuous part of the land.
- (4) Where the Commission is unable, after diligent inquiry, to ascertain:
  - (a) whether any land is occupied; or
  - (b) the identity of the person occupying any land;it may treat the land as being unoccupied.
- (5) Where service of a notice under this Act on the occupier of any land cannot be effected either personally or by post, service of the notice may be effected by:
  - (a) causing a copy of the notice to be published in a newspaper circulating in the district in which the land, or part of the land, is situated; and
  - (b) affixing, if practicable, a copy of the notice to a conspicuous part of the land.

#### **74 Railways need not be fenced**

Notwithstanding any law of a State or Territory to the contrary, other than a law that specifically relates to the safety in the operation of railways, the Commission is not required to fence, or to maintain any fence erected in connection with, any railway operated by it.

#### **74A Operation of certain State and Territory laws**

- (1) The Commission, in operating railways, is subject to any law of a State or Territory that specifically relates to the safety in the operation of railways.
- (2) Subject to subsection (3), a person who operates a railway that was previously operated by the Commission is, in operating the railway, subject to all laws of a State or Territory that relate to the operation of railways.
- (3) The Minister may, by written notice published in the *Gazette*, declare that specified laws of a State or Territory that relate to the operation of railways do not apply to a specified person who operates a railway that was previously operated by the Commission.

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- (4) A declaration under subsection (3) must specify the period during which it has effect. The period must end no later than 6 months after the Commission ceases to operate the railway concerned.
- (5) A declaration made under subsection (3) has effect accordingly.

**75 Act subject to Railways Agreement Acts**

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

**76 Closing of roads**

- (1) Where the Commission proposes to close a road (otherwise than temporarily for purposes connected with the construction, maintenance, alteration or repair of a railway), it shall:
  - (a) give notice, in writing, to the authority having the care and management of the road that:
    - (i) it proposes to close the road; and
    - (ii) the authority may, not later than 30 days after service of the notice on it, lodge with the Commission an objection, in writing, to the closure of the road; and
  - (b) publish in a newspaper circulating in the district in which the road is situated notice that:
    - (i) it proposes to close the road; and
    - (ii) any interested person may, not later than 30 days after the publication of the notice, lodge with the Commission an objection, in writing, to the closure of the road.
- (2) Where the Commission is satisfied, after considering any objections to the closure of the road lodged with it in pursuance of subsection (1), that it is necessary or desirable to do so, it may declare, by instrument in writing, that the road is closed from a specified time.
- (3) Where, under subsection (2), the Commission declares that a road is closed from a specified time, it shall:
  - (a) give notice, in writing, to the authority having the care and management of the road, and each interested person who lodged an objection in pursuance of subsection (1) to the closure of the road, that the road is closed from that time; and

- (b) publish in a newspaper circulating in the locality in which the road is situated notice that the road is closed from that time.
- (4) A notice under subsection (3) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision of the Commission by or on behalf of any person or persons whose interests are affected by the decision.
- (5) A failure to comply with subsection (4) in relation to a decision of the Commission under subsection (2) does not affect the validity of the decision.
- (6) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Commission under subsection (2).
- (7) A reference in this section to a road includes a reference to a part of a road.

### **77 Compensation for acquisition of property**

- (1) Where, but for this section, the operation of subsection 14(3) or section 76 would result in the acquisition of property from a person otherwise than on just terms, the Commission is liable to pay to the person such compensation as is agreed upon between them or, in the absence of agreement, such compensation as is determined by the Supreme Court of a State or Territory in an action brought by the person against the Commission.
- (2) The Supreme Courts of the States have jurisdiction, and the Supreme Courts of the Territories have jurisdiction to the extent that the Constitution permits, with respect to matters arising under subsection (1) in respect of which actions may be brought in those Courts under that subsection.
- (3) In subsection (1), *acquisition of property* and *just terms* have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

### **78 Endangering safety of trains etc.**

- (1) A person must not, intentionally or recklessly, do any act or thing that is likely to endanger the safety of:
  - (a) a train operated by the Commission;

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

Penalty: Imprisonment for 10 years.

- (2) An offence against subsection (1) is an indictable offence.
- (5) This section shall be read and construed as being in addition to, and not in derogation of or in substitution for, any other law of the Commonwealth or any law of a State or Territory.
- (6) Without limiting the generality of paragraph (1)(c), all land, and all buildings and other structures, owned or occupied by the Commission, and used in connection with a railway operated by the Commission, shall, for the purpose of that paragraph, be taken to be within the limits of that railway.

**78A Public Works Committee Act**

The *Public Works Committee Act 1969* does not apply in relation to the Commission.

**78B Lands Acquisition Act**

- (1) The *Lands Acquisition Act 1989* does not apply in relation to the acquisition of land, or an interest in land, by the Commission by agreement.
- (2) In subsection (1):  
*interest*, in relation to land, means:
  - (a) a legal or equitable estate or interest in the land; or
  - (b) a right, power or privilege over, or in relation to, the land.

**79 By-laws**

- (1) The Commission may, in writing, make by-laws, not inconsistent with this Act or the regulations, prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the by-laws; or

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;
- and, in particular, making provision for, or with respect to:
- (c) the terms and conditions governing the provision to, or use by, any person of services provided by, or facilities owned or operated by, the Commission;
  - (ca) the provision by or on behalf of the Commission of entertainment (including gambling facilities) or other services on passenger trains or on premises owned or occupied by the Commission;
  - (d) the protection and preservation of property of, or property in the custody or under the control of, the Commission;
  - (e) the maintenance of safety and order on railways and trains operated by the Commission;
  - (f) the sale or other disposal of unclaimed goods in the possession of the Commission and the disposal of the proceeds of any such sale;
  - (g) the prohibition of interference with:
    - (i) services provided by the Commission; and
    - (ii) property of, or property in the custody or under the control of, the Commission; and
  - (h) prescribing penalties not exceeding 15 penalty units for each breach of the by-laws.
- (2) A by-law made under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **80 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed by the regulations; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;
- and, in particular, prescribing penalties not exceeding 15 penalty units for each offence against the regulations



**Table of Acts****Notes to the *Australian National Railways Commission Act 1983*****Note 1**

The *Australian National Railways Commission Act 1983* as shown in this compilation comprises Act No. 140, 1983 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 30 June 1997 is not included in this compilation. For subsequent information *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian National Railways Commission Act 1983</i>	140, 1983	22 Dec 1983	17 Feb 1984 ( <i>see Gazette</i> 1984, No. S47)	
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (a)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1986</i>	76, 1986	24 June 1986	S. 3: Royal Assent (b)	S. 9
<i>Australian National Railways Commission Amendment Act 1987</i>	100, 1987	6 Nov 1987	S. 4: (c) Remainder: Royal Assent	S. 4(2)
<i>Commonwealth Authorities Legislation (Pay-roll Tax) Amendment Act 1988</i>	55, 1988	15 June 1988	1 July 1988	—
<i>Commonwealth Employees' Rehabilitation and Compensation Act 1988</i>	75, 1988	24 June 1988	Ss. 1 and 2: Royal Assent Ss. 4(1), 68–97, 99 and 100: 1 July 1988 ( <i>see Gazette</i> 1988, No. S196) Remainder: 1 Dec 1988 ( <i>see Gazette</i> 1988, No. S196)	—
<i>Industrial Relations (Consequential Provisions) Act 1988</i>	87, 1988	8 Nov 1988	Ss. 1 and 2: Royal Assent Remainder: 1 Mar 1989 ( <i>see s. 2(2)</i> and <i>Gazette</i> 1989, No. S53)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988</i>	99, 1988	2 Dec 1988	2 Dec 1988	—
<i>Australian National Railways Commission Amendment Act 1988</i>	122, 1988	14 Dec 1988	14 Dec 1988	—
<i>Lands Acquisition (Repeal and Consequential Provisions) Act 1989</i>	21, 1989	20 Apr 1989	9 June 1989 (see s. 2 and <i>Gazette</i> 1989, No. S185)	—
<i>Transport Legislation Amendment Act 1991</i>	101, 1991	27 June 1991	Part 3 (ss. 7–9): 17 Feb 1984 (d)	S. 3
<i>Transport and Communications Legislation Amendment Act 1991</i>	173, 1991	25 Nov 1991	Part 3 (ss. 7-9): (e)	—
<i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992</i>	94, 1992	30 June 1992	S. 3: 1 July 1990 Remainder: Royal Assent	—
<i>Sales Tax Amendment (Transitional) Act 1992</i>	118, 1992	30 Sept 1992	28 Oct 1992	—
<i>Transport and Communications Legislation Amendment Act (No. 3) 1992</i>	216, 1992	24 Dec 1992	Part 3 (ss. 6–9): Royal Assent (f)	—
<i>Transport and Communications Legislation Amendment Act (No. 2) 1993</i>	5, 1994	18 Jan 1994	Schedule (items 10–18): (g)	—
<i>Transport Legislation Amendment Act 1995</i>	95, 1995	27 July 1995	S 11(1), 12 and Schedule 1 (Part D): Royal Assent (h)	Ss. 11(1) and 12
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 4 (items 31–33): Royal Assent (i)	—
<i>Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997</i>	59, 1997	3 May 1997	Schedule 1 (items 3, 4): 1 July 1997 (j)	—



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian National Railways Commission Sale Act 1997</i>	96, 1997	30 June 1997	Schedules 1, 2 and 5: Royal Assent ( <i>k</i> ) Schedule 3 (items 1–5): 1 Nov 2000 (see <i>Gazette</i> 2000, No. S562) ( <i>k</i> )	Sch. 3 (items 2–4, 5) and Sch. 5 Sch. 3 (item 4A) (ad. No. 74, 2000, Sch. 2 (item 2)) [see Table A]
<b>as amended by</b>				
<i>Transport Legislation Amendment Act 2000</i>	74, 2000	28 June 2000	Schedule 2 (item 2): Royal Assent ( <i>ka</i> )	—
<i>Tax Law Improvement Act 1997</i>	121, 1997	8 July 1997	Schedule 3 (item 63): ( <i>l</i> )	—
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 389–412): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) ( <i>m</i> )	—
<b>as amended by</b>				
<i>Statute Law Revision Act 2005</i>	100, 2005	6 July 2005	Schedule 2 (items 4–6): ( <i>ma</i> )	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 216–218): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) ( <i>n</i> )	—
<i>Transport Legislation Amendment Act 2000</i>	74, 2000	28 June 2000	Schedule 2 (item 1): ( <i>o</i> )	—

## Act Notes

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- (a) The *Australian National Railways Commission Act 1983* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (b) The *Australian National Railways Commission Act 1983* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (c) Subsection 2(2) of the *Australian National Railways Commission Amendment Act 1987* provides as follows
- (2) Section 4 shall come into operation or be deemed to have come into operation, as the case requires, immediately before 30 September 1987.
- (d) The *Australian National Railways Commission Act 1983* was amended by Part 3 (sections 7-9) only of the *Transport Legislation Amendment Act 1991*, subsection 2(2) of which provides as follows:
- (2) Part 3 is taken to have commenced on 17 February 1984.
- (e) The *Australian National Railways Commission Act 1983* was amended by Part 3 (sections 7-9) only of the *Transport and Communications Legislation Amendment Act 1991*, subsection 2(2) of which provides as follows:
- (2) Part 3 is taken to have commenced immediately after the *Australian National Railways Commission Act 1983* commenced.
- The *Australian National Railways Commission Act 1983* came into operation on 17 February 1984 (see *Gazette* 1984, No. S47).
- (f) The *Australian National Railways Commission Act 1983* was amended by Part 3 (sections 6-9) only of the *Transport and Communications Legislation Amendment Act (No. 3) 1992*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (g) The *Australian National Railways Commission Act 1983* was amended by the Schedule (items 10-18) only of the *Transport and Communications Legislation Amendment Act (No. 2) 1993*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to subsections (2) to (10) (inclusive), this Act commences on the day on which it receives the Royal Assent.
  - (2) The amendments contained in items 15, 35 and 115 to 128 (inclusive) of the Schedule commence 28 days after the day on which this Act receives the Royal Assent.
- (h) The *Australian National Railways Commission Act 1983* was amended by Schedule 1 (Part D) only of the *Transport Legislation Amendment Act 1995*, subsections 2(1) and (3)(b) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (3) The following provisions commence on the day on which this Act receives the Royal Assent or 1 July 1995, whichever is later:
    - (b) Parts D and F of Schedule 1.
- (i) The *Australian National Railways Commission Act 1983* was amended by Schedule 4 (items 31-33) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

**Act Notes**

- (j) The *Australian National Railways Commission Act 1983* was amended by Schedule 1 (items 3, 4) only of the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*, subsection 2(2)(d) of which provides as follows:
- (2) The following provisions commence on 1 July 1997:
- (d) Schedule 1;
- (k) The *Australian National Railways Commission Act 1983* was amended by Schedules 1, 2 and Schedule 3 (item 1) only of the *Australian National Railways Commission Sale Act 1997*, subsections (1) and (5) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (5) The remaining items of Schedule 3 and Schedule 4 commence on a day to be fixed by Proclamation. The day must not be earlier than the later of the day proclaimed for the purposes of subsection (2) and the day proclaimed for the purposes of subsection (3).
- (ka) The *Australian National Railways Commission Sale Act 1997* was amended by Schedule 2 (item 2) only of the *Transport Legislation Amendment Act 2000*, subsection 2(1) provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (l) The *Australian National Railways Commission Act 1983* was amended by Schedule 3 (item 63) only of the *Tax Law Improvement Act 1997*, subsections 2(2) and (3) of which provide as follows:
- (2) Schedule 1 commences on 1 July 1997 immediately after the commencement of the *Income Tax Assessment Act 1997*.
- (3) Each of the other Schedules (except Schedule 12) commences immediately after the commencement of the immediately preceding Schedule.
- (m) The *Australian National Railways Commission Act 1983* was amended by Schedule 2 (items 389–412) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (ma) Subsection 2(1) (item 27) of the *Statute Law Revision Act 2005* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
27. Schedule 2, items 4 to 6	Immediately after the time specified in the <i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i> for the commencement of Schedule 2 to that Act.	1 January 1998

- (n) The *Australian National Railways Commission Act 1983* was amended by Schedule 1 (items 216–218) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.

## **Act Notes**

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- (o) The *Australian National Railways Commission Act 1983* was amended by Schedule 2 (item 1) only of the *Transport Legislation Amendment Act 2000*, subsection 2(2) of which provides as follows:
- (2) Item 1 of Schedule 2 is taken to have commenced immediately after the commencement of Schedule 1 to the *Australian National Railways Commission Sale Act 1997*.

Schedule 1 to the *Australian National Railways Commission Sale Act 1997* commenced on 30 June 1997.

**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 3 .....	am. No. 122, 1988; No. 173, 1991; No. 216, 1992; No. 152, 1997
Ss. 3A, 3B .....	ad. No. 96, 1997
Note to s. 4(2) .....	ad. No. 152, 1997
S. 5 .....	am. No. 96, 1997
S. 6 .....	am. No. 216, 1992; No. 96, 1997
S. 6AA .....	ad. No. 96, 1997
S. 6A .....	ad. No. 216, 1992
S. 7 .....	rep. No. 122, 1988
S. 8 .....	am. No. 152, 1997
S. 9 .....	am. No. 122, 1988
S. 13A .....	ad. No. 100, 1987
S. 16 .....	am. No. 59, 1997
S. 18 .....	am. No. 96, 1997
S. 19 .....	rep. No. 96, 1997
S. 20 .....	rep. No. 96, 1997
S. 20A .....	ad. No. 95, 1995 am. No. 152, 1997
S. 20B .....	ad. No. 95, 1995
S. 21 .....	am. No. 96, 1997
S. 22 .....	am. No. 122, 1988 rep. No. 152, 1997
S. 23 .....	am. No. 122, 1988
S. 24 .....	am. No. 122, 1988; Nos. 96 152, 1997 rep. No. 96, 1997
S. 26 .....	am. No. 43, 1996; No. 152, 1997
Ss. 29, 30 .....	am. No. 122, 1988; No. 152, 1997
S. 31 .....	am. No. 122, 1988; No. 152, 1997
S. 32 .....	am. No. 122, 1988; No. 94, 1992; No. 152, 1997; No. 95, 1995 rep. No. 96, 1997
S. 33 .....	am. No. 122, 1988 rep. No. 152, 1997
S. 34 .....	am. No. 122, 1988; Nos. 96 and 152, 1997
S. 34A .....	ad. No. 122, 1988
Div. 1 of Part IV (ss. 35, 36) .....	rep. No. 122, 1988
Div. 1 of Part IV (ss. 35, 36, 36A–36F) .....	ad. No. 122, 1988
Ss. 35, 36 .....	rs. No. 122, 1988

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 36A .....	ad. No. 122, 1988 am. No. 95, 1995; No. 152, 1997
S. 36B .....	ad. No. 122, 1988
S. 36C .....	ad. No. 122, 1988 rs. No. 96, 1997
S. 36D .....	ad. No. 122, 1988
S. 36E .....	ad. No. 122, 1988 am. No. 152, 1997
S. 36F .....	ad. No. 122, 1988 am. No. 95, 1995
S. 38 .....	am. No. 122, 1988
S. 39 .....	am. No. 43, 1996; No. 152, 1997
S. 41 .....	am. No. 43, 1996; No. 152, 1997
S. 43 .....	am. No. 5, 1994; No. 152, 1997
S. 45 .....	am. No. 101, 1991
S. 47 .....	am. No. 100, 1987; No. 75, 1988
S. 48 .....	am. No. 75, 1988; No. 101, 1991
S. 48A .....	ad. No. 75, 1988
Div. 4 of Part IV (ss. 49–52) .....	rep. No. 87, 1988
S. 49 .....	rep. No. 87, 1988
S. 50 .....	am. No. 75, 1988 rep. No. 87, 1988
Ss. 51, 52 .....	rep. No. 87, 1988
S. 53 .....	rep. No. 76, 1986
S. 54 .....	rep. No. 96, 1997
S. 55 .....	am. No. 95, 1995; No. 96, 1997
S. 57 .....	rs. No. 96, 1997
S. 57A .....	ad. No. 95, 1995 rep. No. 96, 1997
S. 58 .....	rep. No. 96, 1997
S. 59 .....	rep. No. 152, 1997
S. 60 .....	am. No. 122, 1988; No. 152, 1997
S. 61 .....	am. No. 76, 1988
S. 62 .....	am. No. 76, 1986 rs. No. 122, 1988 am. No. 96, 1997
S. 63 .....	rs. No. 122, 1988 am. No. 96, 1997
S. 64 .....	rs. No. 122, 1988
S. 64A .....	ad. No. 173, 1991
S. 65 .....	rs. No. 122, 1988 rep. No. 152, 1997
S. 65A .....	ad. No. 76, 1986 rep. No. 122, 1988

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 66 .....	rs. No. 122, 1988 rep. No. 152, 1997
S. 66A .....	ad. No. 122, 1988 am. No. 5, 1994 rep. No. 152, 1997
S. 67 .....	am. No. 55, 1988; No. 118, 1992; No. 121, 1997
Part VA .....	ad. No. 96, 1997
(ss. 67AA–67AZ, 67AZA–67AZX)	
Ss. 67AA–67AZ	ad. No. 96, 1997
S. 67AZA.....	ad. No. 96, 1997
S. 67AZB.....	ad. No. 96, 1997 am. No. 146, 1999
Ss. 67AZC–67AZQ .....	ad. No. 96, 1997
S. 67AZR.....	ad. No. 96, 1997 am. No. 74, 2000
Ss. 67AZS–67AZU.....	ad. No. 96, 1997
S. 67AZV.....	ad. No. 96, 1997 am. No. 146, 1999
Ss. 67AZW, 67AZX.....	ad. No. 96, 1997
Heading to s. 67A.....	rs. No. 152, 1997
S. 67A .....	ad. No. 122, 1988 am. No. 152, 1997
S. 69 .....	am. No. 5, 1994
S. 70 .....	am. No. 100, 1987; No. 5, 1994
S. 71 .....	rep. No. 152, 1997
S. 74 .....	am. No. 96, 1997
S. 74A .....	ad. No. 96, 1997
S. 78 .....	am. No. 5, 1994
S. 78A .....	ad. No. 122, 1988
S. 78B .....	ad. No. 122, 1988 am. No. 21, 1989
S. 79 .....	am. No. 65, 1985; No. 100, 1987; Nos. 99 and 122, 1988; No. 5, 1994
S. 80 .....	am. No. 5, 1994

**Note 2**

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**Note 2**

Section 24(1)(a), (b)—Schedule 2 (item 398) of the *Audit (Transitional and Miscellaneous) Amendment Act 1997* provides as follows:

**Schedule 2**

**398 Paragraphs 24(1)(a) and (b)**

Omit “Chairman” (wherever occurring), substitute “Chair”.

The proposed amendment was misdescribed and is not incorporated in this compilation.



**Table A**

**Application, saving or transitional provisions**

*Australian National Railways Commission Sale Act 1997* (No. 96, 1997)

**Schedule 3**

**2 Definitions**

In this Schedule:

*repeal day* means the day on which this item commences.

*residual assets* means:

- (a) any legal or equitable estates or interests in real or personal property, including contingent or prospective ones; and
- (b) any rights, privileges and immunities including contingent or prospective ones;

of the Commission immediately before the repeal day.

*residual instruments* means instruments that are in force immediately before the repeal day:

- (a) to which the Commission is a party; or
- (b) that were given to, by or in favour of the Commission; or
- (c) in which a reference is made to the Commission; or
- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by the Commission.

*residual liability* means liabilities and duties of the Commission, including contingent and prospective ones, immediately before the repeal day.

**3 Residual assets and liabilities to become Commonwealth assets and liabilities**

- (1) By force of this item, all the residual assets of the Commission cease to be assets of the Commission and become assets of the Commonwealth on the repeal day.

## **Table A**

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- (2) By force of this item, all residual liabilities of the Commission cease to be liabilities of the Commission and become liabilities of the Commonwealth on the repeal day.
- (3) A residual instrument continues to have effect on and after the repeal day as if a reference in the instrument to the Commission were a reference to the Commonwealth.

### **4 Provisions continue to apply**

In spite of the repeal of the *Australian National Railways Commission Act 1983* by this Schedule, that Act continues to apply in relation to residual assets and residual liabilities as if those residual assets and residual liabilities were assets and liabilities transferred to the Commonwealth under section 67AE or 67AG of that Act.

### **4A Registration of transfers after repeal**

Despite the repeal of the *Australian National Railways Commission Act 1983* by this Schedule, section 67AZJ of that Act continues to apply, in relation to any right, title or interest in land that vested in a person under section 67AE or 67AM of that Act before its repeal, as if the repeal had not happened.

### **5 Pending proceedings**

If, immediately before the repeal day, proceedings to which the Commission was a party are pending in a court, then, on and after the repeal day, the Commonwealth is substituted for the Commission in the proceedings and has the same rights and obligations as the Commission would have had in the proceedings.

## **Schedule 5**

### **Part 1—Certain assets not to be fixtures**

#### **1 Certain assets not to be fixtures**

- (1) The Minister for Finance may, by written notice, declare that specified assets that are affixed to land and that are disposed of by the Commission or by the Commonwealth under Part VA of the *Australian National Railways Commission Act 1983* are taken, for all purposes, to be separate assets being chattels personal and not fixtures.

Note: An asset may be specified by name, by inclusion in a specified class or in any other way.

**Table A**

- (2) The declaration has effect accordingly.

**Part 2—Access to railways for defence-related purposes etc.****2 Access to railways for defence-related purposes and for emergency or disaster relief**

- (1) The Minister may, by written notice given to a person who manages or controls a railway previously managed or controlled by the Commission:
- (a) require that access be given to specified kinds of railway services for specified kinds of defence-related purposes; or
  - (b) require that priority of access be given to specified kinds of railway services for specified kinds of defence-related purposes.
- (2) The manner in which that access, or priority of access, is to be given is to be set out in the notice.
- (3) Subject to item 3, the terms and conditions on which that access, or priority of access, is to be given are to be set out in the notice.
- (4) A person must comply with a notice given to it under subitem (1).
- (5) A contravention of subitem (4) is not an offence. However, a contravention of subitem (4) is a ground for obtaining an injunction.
- (6) In addition to other methods of giving a notice, a notice under subitem (1) may be given by facsimile transmission.
- (7) In addition to its effect apart from this subitem, this item has the effect it would have if each reference to a person who manages or controls a railway previously managed or controlled by the Commission were, by express provision, confined to such a person that is a constitutional corporation.
- (8) In this item:

***Commission*** means the Australian National Railways Commission.

***railway service*** means a service provided in the course of conducting or managing a railway, and includes the use of facilities that are used for those purposes.

## **Table A**

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*defence-related purpose* means a purpose related to any of the following:

- (a) the defence of Australia;
- (b) the operation of the Australian Defence Force in connection with the defence of Australia;
- (c) the transport of the armed forces of a foreign country in connection with the defence of Australia;
- (d) the operation of the Australian Defence Force in connection with international humanitarian aid or United Nations peace-keeping operations;
- (e) the management of an emergency or a disaster (whether natural or otherwise), where that management involves the Australian Defence Force.

### **3 Compensation for access to railways for defence-related purposes and for emergency or disaster relief**

#### *Designated agency in relation to a notice*

- (1) A notice under subitem 2(1) must specify a Commonwealth agency as the designated agency in relation to the notice.
- (2) If a notice under subitem 2(1) relates to either of the following purposes:
  - (a) the defence of Australia;
  - (b) the operation of the Australian Defence Force in connection with the defence of Australia;the notice must specify the Department of Defence as the designated agency in relation to the notice.
- (3) If a notice under subitem 2(1) relates to the management of an emergency or a disaster (whether natural or otherwise), the notice may specify:
  - (a) the Department of Defence; or
  - (b) any other Commonwealth agency that is involved in the management of the emergency or disaster;as the designated agency in relation to the notice.

**Table A***Liability for loss or damage*

- (4) If a notice under subitem 2(1) is given to a person and that person, or another person contracted, licensed or otherwise acting for that person in the operation of the railway, suffers loss or damage in consequence of the giving of access, or the giving of priority of access, in accordance with the notice the Commonwealth is liable to pay to the person who suffers the loss or damage an amount equal to the loss or damage.
- (5) If:
- (a) the person who suffers the loss or damage; and
  - (b) the head of the designated agency in relation to the notice (on behalf of the Commonwealth);
- do not agree on the amount of loss or damage mentioned in subitem (4), the person may recover the amount of the loss or damage by action against the Commonwealth in a court of competent jurisdiction.
- (6) In determining the amount of any loss or damage mentioned in subitem (4), regard must be had to anything done in mitigation of the loss or damage (including any remedial work).
- (7) A payment under subitem (4) or (5) is to be made out of amounts appropriated by the Parliament for the purposes of the designated agency in relation to the notice.

*Compensation—constitutional safety-net*

- (8) If:
- (a) apart from this item, the operation of item 2 would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
- the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (9) If the Commonwealth and the person do not agree on the amount of the compensation mentioned in subitem (8), the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

**Table A**

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*Section 70 of the Defence Act 1903*

- (10) This item has effect despite anything in section 70 of the Defence Act 1903.

*Definitions*

- (11) In this item:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*Commonwealth agency* means:

- (a) a Department; or
- (b) an agency or instrumentality of the Commonwealth.

*designated agency*, in relation to a notice, means the Commonwealth agency specified in the notice as the designated agency in relation to the notice.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.