

TRANSPORT (DIVISION OF FUNCTIONS) AMENDMENT ACT.

Act No. 46, 1940.

An Act to amend the Transport (Division of Functions) Act, 1932, and certain other Acts in certain respects; to validate certain matters; and for purposes connected therewith. [Assented to, 9th December, 1940.]

George VI.
No. 46, 1940.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Transport (Division of Functions) Amendment Act, 1940." Short title.

(2) The Transport (Division of Functions) Act, 1932, as amended by subsequent Acts and by this Act, may be cited as the Transport (Division of Functions) Act, 1932-1940.

Transport (Division of Functions) Amendment Act.

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Amendment
of Act No.
31, 1932.

Sec. 20.

(Construc-
tion of
Acts, etc.)

2. (1) The Transport (Division of Functions) Act, 1932, as amended by subsequent Acts, is amended—

(a) by omitting from section twenty the words “the Commissioner appointed under this Act to exercise and perform the power, authority, duty or function of the Board of Commissioners to which such reference applies” and by inserting in lieu thereof the following words and new subsections:—

(a) the Commissioner for Railways—where, and in so far as, such Act, by-law, regulation, ordinance, instrument or document relates to or in any way affects or concerns the Department of Railways or the administration of that Department;

(b) the Commissioner for Road Transport and Tramways—where, and in so far as, such Act, by-law, regulation, ordinance, instrument or document relates to or in any way affects or concerns the Department of Road Transport and Tramways or the administration of that Department;

(c) the Commissioner for Main Roads—where, and in so far as, such Act, by-law, regulation, ordinance, instrument or document relates to or in any way affects or concerns the Department of Main Roads or the administration of that Department.

(2) Without prejudice to the generality of subsection one of this section—

(a) any reference of the nature referred to in that subsection may, pursuant to that subsection, be read, deemed and taken to refer to the Commissioner for Railways, the Commissioner for Road Transport and Tramways or the Commissioner for Main Roads or to any two or more of such Commissioners at the same or at different times as the case may require;

(b)

- (b) the Commissioner for Railways shall have and enjoy, in relation to the administration by him of the Department of Railways, and to any power, authority, duty or function which may be exercised or performed by him or on his behalf and to the exercise and performance of any such power, authority, duty or function, all the privileges, protections and immunities which, immediately before the commencement of this Act, were had and enjoyed by or provided for the Board of Commissioners;
- (c) the Commissioner for Road Transport and Tramways shall have and enjoy, in relation to the administration by him of the Department of Road Transport and Tramways, and to any power, authority, duty or function which may be exercised or performed by him or on his behalf and to the exercise and performance of any such power, authority, duty or function, all the privileges, protections and immunities which, immediately before the commencement of this Act, were had and enjoyed by or provided for the Board of Commissioners;
- (d) the Commissioner for Main Roads shall have and enjoy, in relation to the administration by him of the Department of Main Roads, and to any power, authority, duty or function which may be exercised or performed by him or on his behalf and to the exercise and performance of any such power, authority, duty or function, all the privileges, protections and immunities which, immediately before the commencement of this Act, were had and enjoyed by or provided for the Board of Commissioners.

(3) This section shall not be construed so as to prejudice or limit any privilege, protection
or

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or immunity which is, by the operation of any Act, had and enjoyed by or provided for any of the Commissioners appointed under this Act.

New secs.
27-30.

(b) by inserting next after section twenty-six the following new sections:—

Limitation
of actions.
cf. Act No.
30, 1912,
s. 143.

27. All actions against any of the Commissioners appointed under this Act or against any person for anything done or omitted or purporting to have been done or omitted under this Act or under any other Act (whether passed before or after the commencement of this Act) which confers or imposes any power, authority, duty or function on any such Commissioner, or in the exercise or performance of any power, authority, duty or function conferred or imposed by any such Act, shall be commenced within one year after the act or omission complained of was committed or made.

Notice of
action.
cf. *Ibid.*
s. 144.

28. (1) No action shall be commenced against any of the Commissioners appointed under this Act or any person for anything done or omitted or purporting to have been done or omitted under this Act or under any other Act (whether passed before or after the commencement of this Act) which confers or imposes any power, authority, duty or function on any such Commissioner or in the exercise or performance of any power, authority, duty or function conferred or imposed by any such Act, until one month at least after a notice in writing of such intended action has been delivered to or left at the office of such Commissioner or person by the party intending to commence such action, or by his attorney or agent.

(2) Such notice shall clearly and explicitly state the cause of action and the court in which the same is intended to be brought, and upon the back thereof shall be endorsed the name and place of abode of the party so intending to sue and also the name and place of abode or of business

business of the attorney or agent, if such notice was served by such attorney or agent. No. 46, 1940.

(3) A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein unless the court before which the action is tried is of opinion that the defendant in the action has been prejudiced in his defence by such defect or inaccuracy.

(4) The defendant in every such action may plead the general issue and at the trial thereof give this Act and the special matter in evidence.

29. In any action, either under the Compensation to Relatives Act of 1897, as amended by subsequent Acts, or otherwise, against any of the Commissioners appointed under this Act, in respect of injuries sustained by any person, no larger sum than two thousand pounds shall be recoverable. Limit of amount which may be recovered against Commissioners.
cf. Act No. 30, 1912, s. 145.

30. (1) If any irregularity, trespass, or other wrongful proceeding has been committed in the execution of this Act or of any other Act (whether passed before or after the commencement of this Act) which confers or imposes any power, authority, duty or function on any of the Commissioners appointed under this Act, or in the exercise or performance of any power, authority, duty or function conferred or imposed by any such Act, and if, before action brought in respect thereof, tender of sufficient amends is made to the person injured, such last-mentioned person shall not recover in any such action. Tender of amends.
cf. *Ibid.* s. 146.

(2) If no such tender has been made, the defendant may by leave of the court where such action is pending at any time before issue joined, pay into court such sum of money as the defendant thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

(2)

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(2) Subsection one of this section shall be deemed to have commenced on the twenty-ninth day of December one thousand nine hundred and thirty-two.

(3) Any alteration of the law made by this section shall not affect any action or proceeding concluded before or pending at the commencement of this Act.
