

TRANSPORT (ADMINISTRATION) ACT.

Act No. 23, 1943.

An Act to make further provision for and in relation to the administration of the various departments of the Ministry of Transport; to provide for the appointment of promotions committees; for these and other purposes to amend the Government Railways Act, 1912, the Transport Act, 1930, the Transport (Division of Functions) Act, 1932, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 28th July, 1943.]

George VI.
No. 23, 1943.

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 short title and citation. (Administration) Act, 1943."

(2) The Government Railways Act, 1912, as amended by subsequent Acts and by this Act may be cited as the Government Railways Act, 1912-1943.

(3) The Transport Act, 1930, as amended by subsequent Acts and by this Act may be cited as the Transport Act, 1930-1943.

(4) 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, 1932-1943.

2. The Transport (Division of Functions) Act, 1932, Amendment of Act No. 31, 1932. as amended by subsequent Acts, is amended—

(a) by inserting at the end of section five the following new subsection:—

(5) In the exercise and performance of the powers, authorities, duties and functions conferred and imposed upon the Commissioner for (Commissioner for Road Transport and Tramways.) Road

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Road Transport and Tramways by or under this or any other Act, such Commissioner shall be subject to the control and direction of the Minister.

Sec. 6.
(Commissioner for Main Roads.)

(b) by inserting at the end of section six the following new subsection:—

(5) In the exercise and performance of the powers, authorities, duties and functions conferred and imposed upon the Commissioner for Main Roads by or under this or any other Act, such Commissioner shall be subject to the control and direction of the Minister.

Amendment of Act No. 30, 1912.

3. The Government Railways Act, 1912-1941, is amended—

Sec. 59.
(Rights and liabilities under free passes.)

(a) by omitting from section fifty-nine the words “issued under the last preceding section” and by inserting in lieu thereof the words “authorising free travel on the railways”;

Sec. 60.
(Fraudulent use of free passes.)

(b) by omitting from section sixty the words “one of the persons entitled under the provisions of this Act” and by inserting in lieu thereof the word “entitled”

Further amendment of Act No. 30, 1912.

4. The Government Railways Act, 1912-1941, is further amended—

Sec. 76.
(Promotions.)

(a) by omitting subsection two of section seventy-six and by inserting in lieu thereof the following subsection—

(2) Where the head of the branch so advises the Commissioner he shall set out his reasons for such advice together with the name and position of seniority of any officer in his branch who in his opinion should be passed over.

The Commissioner shall refer the proposal as to the filling of the vacancy to a promotions committee constituted under this Act.

The promotions committee shall inquire into the claims to the promotion in question of all officers proposed to be passed over and shall report to the head of the branch its opinion thereon.

The

The head of the branch shall forward such **No. 23, 1943.** report together with any recommendation he sees fit to make to the Commissioner with all convenient despatch.

(b) by inserting next after section seventy-six the **New see.** following new section:— **76A.**

76A. (1) A promotions committee shall consist of— **Promotions committee.**

- (a) a chairman who shall be appointed by the Commissioner;
- (b) the chief staff officer of the branch in which the officer whose case is under consideration is employed, or where there is no chief staff officer, the senior officer engaged in staff work in that branch; and
- (c) an officers' representative who shall be an officer of the branch in which the officer whose case is under consideration is employed, and who shall be selected by or on behalf of the officers of that branch in the manner prescribed by regulations to be made in that behalf by the Governor.

The provisions of subsection two (other than paragraph (i)) of section one hundred and two of this Act shall extend to and in respect of regulations made under this subsection.

(2) Meetings of a promotions committee shall be convened by the chairman.

(3) At a meeting of a promotions committee the chairman and each member shall have one vote and the decision of the majority shall be the decision of the committee.

(4) When considering any matter referred to it a promotions committee may take evidence or obtain information in such manner as seems to it best calculated to enable it to reach a just conclusion.

(5)

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(5) The member of the promotions committee referred to in paragraph (b) of subsection one of this section may from time to time appoint a deputy to act on his behalf either generally at all meetings or at any particular meeting or meetings of the promotions committee at which he is unable to be present; and if a deputy is so appointed and his appointment notified to the chairman he shall be entitled so to act, and, while so acting, shall possess all the powers, privileges and immunities of a member of the promotions committee.

Sec. 77.
(Competitive examinations.)

Sec. 83.
(Officers guilty of misconduct, how dealt with.)

Sec. 85.

Subst.
sec. 86.

Appeals concerning promotions.

- (c) by omitting from subsection two of section seventy-seven the word "merit" and by inserting in lieu thereof the word "seniority";
- (d) by inserting next after subsection one of section eighty-three the following new subsection:—

(1A) The officer in charge of any workshop, locomotive or other depot, refreshment room or other place may temporarily suspend any officer of inferior rank, position, or grade to his own who is in his charge until the officer at the head of the branch has dealt with such suspension.

Where an officer has been temporarily suspended under this subsection or under subsection one of this section, and the officer at the head of his branch has not imposed any punishment in respect of the matter, the officer so suspended may appeal to the board constituted under section eighty-seven of this Act against his temporary suspension.

- (e) by omitting section eighty-five;
- (f) by omitting section eighty-six and by inserting in lieu thereof the following section:—

86. Where a decision has been made by the Commissioner to promote an officer to fill any vacancy in any branch of the railway service and such officer is not the officer next in rank, position, or grade, any officer in the branch who

who has been passed over may appeal to the **No. 23, 1943** Appeals Board constituted under section eighty-seven of this Act;

- (g) by omitting from subsection one of section **Sec. 87.** eighty-seven the word "other"; (Appeal to Board.)
- (h) by omitting from section ninety the words **Sec. 90.** "secretary to the Commissioners" and by inserting in lieu thereof the words "secretary to the board"; (Records.)
- (i) by inserting **next** after section ninety-one the **New sec. 91A.** following new section:—

91A. In the case of an appeal against punishment imposed the appellant shall on application be entitled to be supplied by the Commissioner without cost to himself with copies of all statements or reports which have been submitted to the Commissioner in connection with the incident or incidents which formed the basis for the punishment against which he is appealing. Appeals against punishment.

Such copies shall, where practicable, be so supplied at least three days before the hearing of the appeal.

No proceedings, civil or criminal, shall lie or be allowed against the Commissioner, or against the person who has made any statement or report a copy of which is so supplied, for or in relation to any matter contained in such statement or report which is or is alleged to be defamatory.

- (j) by omitting from subsection two of section **Sec. 93.** ninety-three the words "as provided in section **Sec. 95.** (Appeal from board to Commissioners.)

- (k) by inserting at the end of section 100B the **Sec. 100B.** following new subsection:—

(3) An officer who has been incapacitated by **injury.** arising out of and in the course of his employment shall, except where such injury was caused by his own serious and wilful misconduct, be entitled, in addition to any payment under subsection one or subsection two of this section, to the cost of such medical or hospital treatment (Officer incapacitated by injury.)

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treatment or ambulance service as may be reasonably necessary having regard to the injury received by the officer.

The provisions of subsections two to seven, both inclusive of section ten of the Workers' Compensation Act, 1926-1942, shall, mutatis mutandis, apply to and in respect of such medical or hospital treatment or ambulance service.

Sec. 100E.
(Election as
to benefits.)

(l) by omitting paragraph (iii) of subsection one of section 100E and by inserting in lieu thereof the following paragraph:—

(iii) to make a claim for damages against such Commissioner, in which case—

- (a) if he succeeds in his claim for damages he shall not be entitled to claim such gratuity or to make any claim against such Commissioner for compensation;
- (b) if he does not succeed in his claim for damages he shall be entitled to make a claim against such Commissioner for compensation but shall not be entitled to claim such gratuity.

**New sec.
101A.**

(m) by inserting next after section one hundred and one the following new section:—

101A. The Commissioner may refer to a promotions committee constituted under this Act any matter concerning the seniority, grading or classification of any officer.

The promotions committee shall inquire into any matter referred to it under this section and shall furnish a report and recommendation to the Commissioner.

(n) by omitting section one hundred and six and by inserting in lieu thereof the following section:—

106. In all public inquiries and investigations into the cause of any accident and in all formal departmental inquiries into the cause of any accident or in respect of any irregularity in regard to which a charge involving punishment

has

**Subst. sec.
106.**

**Representa-
tion of
officers.**

has been or may be laid against an officer any No. 23, 1943. officer concerned in the accident or in the irregularity shall have the right to be represented by the secretary or other officer of his union or by a person whom he may select to represent his interests at such inquiry or investigation.

(o) by omitting subsection one of section 107A and Sec. 107A. by inserting in lieu thereof the following sub-<sup>(Enforce-
ment of
judgments.)</sup> section:—

(1) Where judgment has been given by any court against any officer for the payment of any sum of money, or against any contractor to the Commissioner for the payment of any sum of money in respect of any dishonoured cheque or promissory note or upon any guarantee or bond or for rent of any land or for goods supplied or money lent or for wages due in connection with his contract with the Commissioner, the person in whose favour the judgment has been given may serve on the Commissioner a copy of the judgment certified under the hand of the registrar or other proper officer of the court by which the judgment was delivered or in which it was obtained and a statutory declaration stating that the judgment has not been satisfied by the judgment debtor and setting out the amount due by the judgment debtor under the judgment;

(p) by inserting in paragraph (c) of section one Sec. 134. hundred and thirty-four before the word <sup>(Obstruc-
tions and
trespasses.)</sup> "wilfully" the words "assaults or";

(q) by omitting the Third Schedule and by inserting Subst. Third Schedule. in lieu thereof the following Schedule:—

THIRD SCHEDULE.

Sec. 87.

(a) Salaried officers in the employ of the Commissioner (with the exception of engine-drivers, guards, shunters and signalmen who are paid by annual salaries) in the following divisions:—

Division 1—Professional officers.

Division 2—Other salaried officers.

(b)

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(b) Male officers on wages and engine-drivers, guards, shunters and signalmen excepted from paragraph (a) of this Schedule in the following divisions:—

Division 1—Officers in the clerical and running staff sections of the Mechanical Branch including engine-drivers who are paid by annual salaries.

Division 2—Officers in the mechanical sections of the Mechanical Branch.

Division 3—Officers in the Traffic Branch including guards, shunters and signalmen who are paid by annual salaries.

Division 4—Officers in the Way and Works Branch.

Division 5—Officers in the Signal and Telegraph Branch.

Division 6—Officers in the Electrical Branch.

Division 7—Officers in the Refreshment Rooms section of the Secretariat.

(c) Female officers on wages.

**Amendment
of Act No.
18, 1930.**

5. The Transport Act, 1930, as amended by subsequent Acts, is amended—

**Subst.
sec. 109.**

**Officers
guilty of
misconduct.**

(a) by omitting section one hundred and nine and by inserting in lieu thereof the following section:—

109. Whenever any officer or employee in any branch of the service of the Commissioner for Road Transport and Tramways is guilty of misconduct or of breaking any rule or regulation of that service the officer at the head of such branch may—

- (a) dismiss or suspend him,
- (b) reduce him in rank position or grade and pay,

but every such officer or employee so dealt with shall be notified in writing of the nature of the misconduct charged or of the breach of rule or regulation alleged to have been committed and may appeal in the manner provided in section one hundred and fourteen of this Act.

**Sec. 114.
(Appeal
Board.)**

(b) (i) by omitting from subsection three of section one hundred and fourteen the words “Management Board” and by inserting in lieu thereof the words “Appeal Board”;

(ii)

- (ii) by omitting from subsection five of the ~~No. 23, 1943.~~ same section the words "Management Board" and by inserting in lieu thereof the words "Appeal Board";
- (c) by inserting at the end of section one hundred and twenty-four the following new subsection:—
 - (3) An officer who has been incapacitated by injury arising out of and in the course of his employment shall, except where such injury was caused by his own serious and wilful misconduct, be entitled, in addition to any payment under subsection one or subsection two of this section, to the cost of such medical or hospital treatment or ambulance service as may be reasonably necessary having regard to the injury received by the officer.

The provisions of subsections two to seven both inclusive of section ten of the Workers' Compensation Act, 1926-1942, shall, mutatis mutandis, apply to and in respect of such medical or hospital treatment or ambulance service.

- (d) (i) by omitting subparagraph (c) of paragraph (i) of subsection one of section 124c ~~(Election as to benefits.)~~ and by inserting in lieu thereof the following subparagraph:—
 - (c) to make a claim for damages against such Commissioner, in which case—
 - (a) if he succeeds in his claim for damages he shall not be entitled to claim such gratuity or to make any claim against such Commissioner for compensation;
 - (b) if he does not succeed in his claim for damages he shall be entitled to make a claim against such Commissioner for compensation but shall not be entitled to claim such gratuity.

(ii)

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- (ii) by omitting subparagraph (b) of paragraph (ii) of the same subsection and by inserting in lieu thereof the following subparagraph:—
 - (b) to make a claim for damages against such Commissioner, in which case—
 - (a) if he succeeds in his claim for damages he shall not be entitled to make any claim against such Commissioner for compensation;
 - (b) if he does not succeed in his claim for damages he shall be entitled to make a claim against such Commissioner for compensation.

New sec.
128A.

- (e) by inserting next after section one hundred and twenty-eight the following new section:—

Enforcement
of judg-
ments.
cf. Act No.
30, 1912,
s. 107A.

128A. (1) Where judgment has been given by any court against any officer or employee in any branch of the service of the Commissioner for Road Transport and Tramways (in this section hereinafter referred to as "officer") for the payment of any sum of money, or against any contractor to the Commissioner for the payment of any sum of money in respect of any dishonoured cheque or promissory note or upon any guarantee or bond or for rent of any land or for goods supplied or money lent or for wages due in connection with his contract with the Commissioner, the person in whose favour the judgment has been given may serve on the Commissioner a copy of the judgment certified under the hand of the registrar or other proper officer of the court by which the judgment was delivered or in which it was obtained and a statutory declaration stating that the judgment has not been satisfied by the judgment debtor and setting out the amount due by the judgment debtor under the judgment.

(2) Upon the service upon him of a copy of a judgment and a statutory declaration in

in pursuance of this section, the Commissioner **No. 23, 1948.** shall, as soon as practicable, notify the judgment debtor in writing of the service of the copy judgment and statutory declaration and require him to state in writing, within a time to be specified by him, whether the judgment has been satisfied, and if so, to furnish evidence in support thereof, and if the judgment has not been satisfied, to state the amount then due under it.

(3) If the officer or contractor fails to prove to the satisfaction of the Commissioner that the judgment has been satisfied, the Commissioner may, from time to time, deduct from the net amount of any moneys payable to the officer or contractor such sums as are in his opinion reasonable towards the satisfaction of the judgment, and shall pay those sums to the judgment creditor:

Provided that in no case shall a deduction be made which will reduce the amount to be received by an officer to less than a sum per week equivalent to the amount ascertained in accordance with subsection four of this section, or to less than one-third of the amount which would, but for the provisions of this section, be payable to the officer, whichever is the greater.

(4) The amount which, pursuant to the proviso to subsection three of this section is to be ascertained in accordance with this subsection, shall—

(a) in the application of that proviso to a male officer, be ascertained by deducting five shillings from the amount of the needs basic wage for the time being applicable to awards of the Commonwealth Court of Conciliation and Arbitration for employees of the Commissioner with the fixed loading addition determined in any judgment of that Court delivered either before or after

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after the commencement of the Industrial Arbitration Act, 1940, as being applicable for the time being in relation to such awards;

(b) in the application of that proviso to a female officer, be ascertained by deducting five shillings from an amount equivalent to fifty-four per centum (calculated to the nearest sixpence) of the total sum which comprises the needs basic wage for the time being applicable to awards of the Commonwealth Court of Conciliation and Arbitration for employees of the Commissioner with the fixed loading addition determined in any judgment of that Court delivered either before or after the commencement of the Industrial Arbitration Act, 1940, as being applicable for the time being in relation to such awards.

(5) Where more than one judgment and statutory declaration are served upon the Commissioner in respect of one judgment debtor, the judgments shall be dealt with under this section in the order of service thereof upon the Commissioner.

(6) A payment made to a judgment creditor in pursuance of this section shall, as between the Commissioner and the officer or contractor, be deemed to be a payment in full in money to the extent of such payment by the Commissioner to the officer or contractor.

(7) Any person to whom a payment has been made in pursuance of this section who fails to notify the Commissioner immediately a judgment debt in respect of which the payment was made, is satisfied, shall be liable to forfeit to the Commissioner a penalty not exceeding fifty pounds.

(8) If any payment made in pursuance of this section exceeds the amount due under the judgment, the excess shall be repayable by the

the Commissioner to the judgment debtor, and **No. 23, 1943.**
in default of payment, may be recovered by the
judgment debtor in any court of competent
jurisdiction.

(9) The foregoing provisions of this section shall not apply in relation to any officer or contractor whose estate has been sequestrated either voluntarily or compulsorily for the benefit of his creditors, and who has not obtained a certificate of discharge.

(10) The remedy prescribed by this section shall not, as regards any officer or contractor, limit or affect any other remedy which may be open under the ordinary process of the law; but as regards the Commissioner such remedy shall be an exclusive one.

(f) by inserting in paragraph (c) of section two **See 223.**
hundred and twenty-three before the word **(Obstruc-**
"wilfully" the words "assault or" **tions and**
trespasses.)
