

TRANSPORT AND HIGHWAYS ACT.

Act No. 10, 1950.

An Act to make further provision for securing <sup>George VI,
No. 10, 1950.</sup> an efficient and properly integrated system of public transport; to constitute a New South Wales Transport and Highways Commission; to define its powers, authorities, duties and functions; to amend the State Transport (Co-ordination) Act, 1931-1947, the Transport (Division of Functions) Act, 1932-1947, and certain other Acts; and for purposes connected therewith. [Assented to, 26th April, 1950.]

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 and Highways Act, 1950." <sup>Short title
and com-
mencement.</sup>

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. In this Act unless the context or subject matter otherwise indicates or requires:— <sup>Interpreta-
tion.</sup>

"Commission" means the New South Wales Transport and Highways Commission constituted under this Act.

"Director" means the Director of Transport and Highways appointed under this Act.

3. (1) There shall be a Commission which shall be a body corporate by the name of "The New South Wales Transport and Highways Commission" and by that name shall have perpetual succession and a common seal and may sue and be sued in its corporate name and shall, for the <sup>Constitution
of Commis-
sion.</sup>

No. 10, 1950. the purposes and subject to the provisions of this or any other Act, be capable of purchasing, holding, granting, demising, disposing of, or otherwise dealing with real and personal property, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer.

(2) For the purposes of any Act, the Commission shall be deemed a statutory body representing the Crown.

(3) (a) The Commission shall consist of eight members.

(b) One of such members shall be the Director who shall be chairman of the Commission.

(c) One of such members shall be a representative of the employees engaged in the transport industry.

One of such members shall be a representative of rural industry.

One of such members shall be a person representing trade and commerce.

The members referred to in this paragraph shall—

(i) be appointed by the Governor on the nomination of the Minister;

(ii) hold office at the will of the Governor.

(d) The other members of the Commission shall be the persons who for the time being respectively hold the offices of the Commissioner for Railways, the Commissioner for Road Transport and Tramways, the Commissioner for Main Roads, and the President of the Maritime Services Board of New South Wales.

(4) The Commission shall, subject to the control and direction of the Minister, carry into effect the objects and purposes of this Act and have and discharge the powers, authorities, duties and functions thereby conferred and imposed upon it.

(5) (a) Each member of the Commission shall be entitled to receive such travelling or other expenses as the Governor may determine.

(b) Each member appointed pursuant to paragraph (c) of subsection three of this section shall be paid such fees for each meeting of the Commission at which he is present as the Governor may determine.

No. 10, 1950.

4. (1) There shall be a Director of Transport and Highways who shall be appointed by the Governor.

(2) (a) Subject to this Act the Director shall hold office for the term for which he is appointed and such term shall not exceed seven years, but such Director shall be eligible for re-appointment.

(b) A person who is of or above the age of sixty-five years shall not be appointed as Director.

(3) (a) The Director shall devote the whole of his time to the duties of his office and shall receive such annual salary as the Governor may determine.

(b) In the exercise and performance of the powers, authorities, duties and functions conferred and imposed upon him by or under this Act, the Director shall be subject to the control and direction of the Minister.

(4) (a) In the case of the illness, suspension or absence of the Director the Governor may appoint a person to act as the deputy of such Director during the period of his illness, suspension or absence.

(b) While a deputy appointed under this subsection acts as such deputy he shall have the immunities, powers, authorities and duties of the Director.

(c) A deputy appointed under this subsection may, if the Governor thinks fit, be paid such remuneration for his services and travelling or other expenses as the Governor may determine.

(d) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a deputy to act in the place of the Director, or as to the necessity or propriety of any appointment of a deputy; and all acts or things done or omitted by a deputy when so acting as aforesaid shall be as valid and effectual and shall have the same consequences as if the same had been done or omitted by the Director.

(5) The Director shall be deemed to have vacated his office if he—

(a) engages in New South Wales during his term of office in any paid employment outside the duties of his office;

(b)

Director of
Transport
and High-
ways.

No. 10, 1950.

- (b) becomes bankrupt, compounds with his creditors, or makes an assignment of his salary or estate for their benefit;
- (c) absents himself from duty for a period exceeding fourteen consecutive days, except on leave granted by the Minister;
- (d) becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act, 1898-1949;
- (e) resigns his office by writing under his hand addressed to the Governor;
- (f) becomes incapable of performing his duties;
- (g) becomes in any way concerned or interested (otherwise than as a shareholder or member, but not as a director or manager, in an incorporated company consisting of more than twenty-five persons), in any contract or agreement made by or on behalf of the Commission, the Commissioner for Railways, the Commissioner for Road Transport and Tramways, the Commissioner for Main Roads or the Maritime Services Board of New South Wales, or in any-wise participates or claims to be entitled to participate in the profit thereof, or in any benefit or emolument arising therefrom; or
- (h) is convicted in New South Wales of a felony or of a misdemeanour which is punishable by imprisonment for twelve months or upwards, or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour which is punishable as aforesaid.

The Director shall be deemed to have vacated his office upon the day upon which he attains the age of sixty-five years.

(6) (a) The Director may be suspended from his office by the Governor for misbehaviour or incompetence, but shall not be removed from office except as provided in this subsection.

(b)

(b) The Minister shall cause to be laid before Parliament a full statement of the grounds of suspension within seven sitting days after such suspension if Parliament is then in session, and if not, then within seven sitting days after the commencement of the next session.

(c) The Director suspended under this section shall be restored to office unless each House of Parliament, within twenty-one days from the time when such statement has been laid before it, declares by resolution that the Director ought to be removed from office, and if each House of Parliament within the said time does so declare, the Director shall be removed by the Governor accordingly.

(7) (a) Notwithstanding anything contained in any Act, nothing in this Act shall affect the rights accrued or accruing under the Public Service Act, 1902, the Superannuation Act, 1916, the Transport (Division of Functions) Act, 1932, or the Maritime Services Act, 1935, or any Act amending those Acts, to any person appointed Director who at the time of his appointment, or at any time previously thereto, was an officer of the Public Service, or an officer or employee of any of the departments into which the Ministry of Transport is divided under the Transport (Division of Functions) Act, 1932-1947, or an officer or employee of the Maritime Services Board of New South Wales.

(b) Any person appointed Director who, at any time prior to his appointment, was an officer of the Public Service or an officer or employee of any of the departments into which the Ministry of Transport is divided under the Transport (Division of Functions) Act, 1932-1947, or an officer or employee of the Maritime Services Board of New South Wales, and was a contributor to a superannuation fund or account may continue as a contributor or resume and continue contributions to such fund or account and shall have and receive, upon his ceasing to hold office as Director by effluxion of time, resignation, retirement, becoming incapable, or removal from office otherwise than for misbehaviour or incompetence, any payment, pension or gratuity as if he were an officer or employee within the meaning of the Act under which the fund or account to which his contributions have been made is administered.

For

No. 10, 1950

For such purposes his service in any office under any Act and his service as Director shall be deemed to be service for the purposes of such Act.

(c) If the Director shall die during the currency of his term of office, any payment, pension or gratuity shall become payable or shall be made or granted, as in the case of the death of an officer or employee, within the meaning of such Act.

(d) A Director who ceases to hold office by effluxion of time or who is removed from office otherwise than for misbehaviour or incompetence, and who is not appointed to any office carrying superannuation rights shall, for the purpose of computing the amount of any payment, pension or gratuity, be deemed to have retired upon the day upon which he so ceases to hold office, or is removed from office, as the case may be, and to have so retired at an age at which the payment, pension or gratuity would have become payable in pursuance of the Act under which the fund or account to which his contributions have been made, is administered.

(e) Any officer of the Public Service or any officer or employee of any of the departments into which the Ministry of Transport is divided under the Transport (Division of Functions) Act, 1932-1947, or any officer or employee of the Maritime Services Board of New South Wales, who is appointed Director, shall continue to contribute to any fund or account, and shall be entitled to receive any deferred or extended leave and any payment, pension, or gratuity, as if he were an officer or employee within the meaning of the Public Service Act, 1902, the Superannuation Act, 1916, the Transport (Division of Functions) Act, 1932-1947, or the Maritime Services Act, 1935-1941, or any Act amending those Acts, as the case may be, and for such purposes his service as Director shall be deemed to be service for the purposes of such Acts.

**Public
Service Act,
1902, not
to apply to
Governor's
appointees.**

5. (1) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of the Director or of any member referred to in paragraph (c) of subsection three of

of section three of this Act, and the Director and any such member shall not, in their capacity as members, be subject to the provisions of any such Act during their term of office. No. 10, 1950.

(2) The office of any member appointed pursuant to paragraph (c) of subsection three of section three of this Act shall not for the purposes of the Constitution Act, 1902, or any Act amending or replacing that Act, be deemed to be an office or place of profit under the Crown.

6. (1) (a) The procedure for the calling of meetings of the Commission, and for the conduct of business at such meetings shall be as determined by the Commission. Meetings of Commission.

(b) The Director shall cause a meeting of the Commission to be convened at least once in each month.

(c) Four members of the Commission shall form a quorum, and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Commission, and shall have and may exercise and discharge all the powers, authorities, duties, functions and obligations of the Commission.

(d) At any meeting of the Commission, the Director shall preside. In the absence of the Director (or his deputy, if any) from a meeting, the members present may choose one of their number to preside as chairman of that meeting.

At any meeting of the Commission, the chairman or the member presiding as chairman as the case may be, shall have a deliberative vote, and if the voting is equal, a casting vote.

(2) (a) The Commission shall cause full and accurate minutes to be kept of its proceedings at meetings and submit to the Minister a copy of the minutes of each meeting within one week after the date on which each such meeting is held.

(b) The Commission shall furnish the Minister with full information on any business of the Commission which the Minister may require.

(3) At any meeting of the Commission the decision of a majority of the members present at the meeting shall, subject to subsection four of this section, be the decision

No. 10, 1950. decision of the Commission, and if the members present are equally divided, the Director or member presiding at the meeting shall have a casting vote as aforesaid and the matter shall, subject to subsection four of this section, be determined accordingly.

(4) (a) If the Director disapproves of the decision of the other members with respect to any matter before the Commission for their decision and determination (whether the Director was or was not present when such decision was given), such matter shall be deferred for not less than twenty-four hours after the decision, or if the Director was not present when the decision was given, for not less than twenty-four hours after it has been brought to his knowledge by communication in writing or by electric telegraph, when it shall again be brought forward before the Commission; and if the Director again disapproves of the decision of the other members, the Director shall enter or cause to be entered upon the minutes of the proceedings of the Commission his reasons at length for determining such matter in opposition to the decision of the other members and shall forward to the Minister a copy of such minutes certified under his hand.

The other members or any of them may also enter or cause to be entered upon such minutes their reasons in support of the decision of such members and against the disapproval of the Director and may forward to the Minister a copy of such minutes certified under their hands

The Minister shall determine whether the decision is or is not to be carried into effect and shall give written notice of his determination to the Director. Such determination shall be final and shall be carried into effect by the Commission.

Pending the determination of the Minister in any such case no action shall be taken by the Commission to give effect to a decision so referred to the Minister.

For the purpose of enabling the Minister to make a determination under this subsection the Commission shall if the Minister so desires furnish him with such information and assistance including consultation with him as he may require.

(b)

(b) In the event of the Director being absent from his office on leave of absence or absent from the Commonwealth of Australia, the foregoing provisions of this subsection shall apply in respect of the deputy of the Director; and in that case the words "deputy of the Director" shall in paragraph (a) of this subsection be read for the word "Director."

(c) Where any member or members (other than the Director) dissents from any decision of the Commission such member or members may also enter or cause to be entered upon the minutes recording such decision his or their reasons for dissenting from any such decision and may forward to the Minister a copy of such minutes certified under his or their hands.

(5) No act or proceeding of the Commission shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced, there was a vacancy in the office of any members.

(6) (a) No matter or thing done, and no contract entered into by the Commission, and no matter or thing done by any member or by any person whomsoever acting under the direction of the Commission shall, if the matter or thing was done or the contract was entered into bona fide for the purpose of exercising or discharging the powers, authorities, duties, functions or obligations conferred or imposed on the Commission, subject them or any of them personally to any action, liability, claim or demand whatsoever.

(b) Nothing in this subsection shall exempt any member from liability to be surcharged with the amount of any payment which is disallowed by the Auditor-General in the accounts of the Commission, and which such member authorised or joined in authorising.

(7) (a) The Commission may from time to time in relation to any particular matter or class of matters by writing, under its seal, delegate to any member or to any person or authority any of its powers, authorities, duties and functions, except this power of delegation.

(b)

No. 10, 1950.

(b) A delegate, when acting within the scope of any such delegation, shall be deemed to be the Commission. But no delegation shall prevent the exercise or discharge by the Commission of any power, authority, duty or function.

(c) The Commission may by writing, under its seal, and with the approval of the Minister, revoke any delegation made under this section.

(d) Where the exercise or discharge by the Commission of any power, authority, duty or function is dependent upon the opinion or belief of the Commission in relation to any matter, that power, authority, duty or function may be exercised or discharged by the delegate upon the opinion or belief of that delegate.

Officers and servants.

7. (1) The Director may appoint such officers and employees including a secretary as may be necessary to enable the Commission and the Director to exercise and discharge the powers, authorities, duties and functions conferred and imposed on it or him by or under this Act.

(2) The Commission or the Director may employ, in an advisory or consulting capacity, and so use the services of any person or persons not employed in the Public Service or in any of the departments into which the Ministry of Transport is divided under the Transport (Division of Functions) Act, 1932-1947, or in the Maritime Services Board of New South Wales, at such remuneration as may in any such case be fixed by the Commission or the Director.

(3) For the purposes of this Act the Commission or the Director with the approval of the Public Service Board or of the Minister administering any of the departments into which the Ministry of Transport is divided under the Transport (Division of Functions) Act, 1932-1947, or the Maritime Services Board of New South Wales may, on such terms as may be arranged, make use of the services of any officer or employee of any Government Department or of any of the departments into which the Ministry of Transport is so divided, or of the Maritime Services Board of New South Wales, as the case may be.

(4)

(4) Any officer or employee whose services are used by the Commission or the Director as referred to in subsection three of this section and any officer or employee appointed pursuant to subsection one of this section who, at the time of his appointment or at any time prior thereto, was an officer of the Public Service or an officer or employee of any of the departments into which the Ministry of Transport is divided under the Transport (Division of Functions) Act, 1932-1947, or of the Maritime Services Board of New South Wales, and was a contributor to a superannuation fund or account, may continue as a contributor or resume and continue contributions to such fund or account, and shall be entitled to receive any annual, sick, deferred or extended leave, and any privileges, and any payment, pension or gratuity as if he were an officer or employee within the meaning of the Public Service Act, 1902, as amended by subsequent Acts, or an officer or employee of any of the departments into which the Ministry of Transport is divided under the Transport (Division of Functions) Act, 1932-1947, or of the Maritime Services Board of New South Wales, as the case may be, and for any of such purposes his service as aforesaid shall be deemed to be service for the purposes of any such Act.

(5) Any officer or employee appointed pursuant to subsection one of this section who, at the time of his appointment, was an officer or employee of the Public Service or of any of the departments into which the Ministry of Transport is divided under the Transport (Division of Functions) Act, 1932-1947, or of the Maritime Services Board of New South Wales, shall, if he ceases to be an officer or employee of the Commission or Director from any cause whatsoever otherwise than for misbehaviour or incompetence or in the event of his office under this Act being discontinued or abolished, be entitled, if he is under the age of sixty years, to be appointed as an officer or employee of the Public Service, or of such department or Board, as the case may be, with a classification and salary not lower than that which he held immediately before his appointment as an officer or employee pursuant to subsection one of this section.

No. 10, 1950.

Powers of
Commission.

8. (1) The Commission shall have power to—

- (a) promote and formulate plans for securing and providing an efficient, adequate, economical and properly integrated system of public transport by rail, road, air, sea and inland waterway within the State;
- (b) take such steps as in its opinion will secure the establishment and continuance of a proper standard of efficiency and economy in the conduct of departments into which the Ministry of Transport is divided under the Transport (Division of Functions) Act, 1932-1947, and of the Maritime Services Board of New South Wales;
- (c) keep under continuous review and co-ordinate policy for the development of State operated and privately owned transport of all kinds in the State;
- (d) consider and make recommendations to the Minister on all projects for capital and other extraordinary expenditure proposed by any of the departments into which the Ministry of Transport is divided under the Transport (Division of Functions) Act, 1932-1947, and by the Maritime Services Board of New South Wales;
- (e) consider and co-ordinate the annual budgets of revenue and expenditure of such departments and Board;
- (f) consult with and advise local government authorities and the like upon matters relating to transport;
- (g) control and direct the Commissioner for Railways, the Commissioner for Road Transport and Tramways, the Commissioner for Main Roads, and the Maritime Services Board of New South Wales in the exercise of any of their or its powers, authorities, duties and functions.

The powers conferred on the Commission by the foregoing provisions of this subsection shall in their application to and in respect of the Maritime Services Board of New South Wales be limited

limited to matters relating to the transportation of passengers and goods by sea and inland waterway within the State. **No. 10, 1950.**

(2) The Commissioner for Railways, the Commissioner for Road Transport and Tramways, the Commissioner for Main Roads and the Maritime Services Board of New South Wales shall perform and carry out all such acts, matters and things as are necessary to comply with any direction or requirement given or made to them or it by the Commission in the exercise of the powers conferred upon it by subsection one of this section.

9. (1) The Commission or the Director or any person authorised by it or him in writing in that behalf either generally or for a particular case or class of cases may for the purposes of this Act:— **Powers of inspection, etc.**

- (a) inspect any branch or section of any department into which the Ministry of Transport is divided under the Transport (Division of Functions) Act, 1932-1947, or of the Maritime Services Board of New South Wales and investigate the character of the work therein performed and the efficiency, economy and general working of the branch or section;
- (b) inspect all books, papers, documents, accounts, places, properties and buildings under the control of any of the departments into which the Ministry of Transport is divided under the Transport (Division of Functions) Act, 1932-1947, or of the Maritime Services Board of New South Wales.

(2) The Commission or the Director may, for the purposes of this Act, at any time and from time to time require the Commissioner for Railways, the Commissioner for Road Transport and Tramways, the Commissioner for Main Roads and the Maritime Services Board of New South Wales or any authority or person conducting activities in connection with transport services to furnish all such information, particulars and records as the Commission or Director (as the case may be) may require.

No. 10, 1950.Annual report.**Contributions by certain authorities towards expenses of administration.**

10. (1) As soon as practicable after the thirtieth day of June in each year, the Commission shall prepare and furnish to the Minister a report upon the administration of this Act during the year ending on the date aforesaid.

(2) The Minister shall lay such report, or cause it to be laid, before both Houses of Parliament as soon as practicable after the receipt by him of the report.

11. (1) The Commission shall, as soon as practicable after the first day of July in each year, forward to the Colonial Treasurer a statement setting forth the amount expended in the administration of this Act and in carrying out the powers, authorities, duties and functions conferred and imposed upon the Commission and the Director by or under this Act during the period of twelve months immediately preceding such first day of July.

(2) The Commissioner for Railways, the Commissioner for Road Transport and Tramways, the Commissioner for Main Roads and the Maritime Services Board of New South Wales shall make such contributions towards the amount so expended in any period of twelve months referred to in subsection one of this section as the Colonial Treasurer may determine.

Different contributions may be determined in respect of each of the persons abovementioned.

Such contributions shall be payable in such manner and at such times as the Colonial Treasurer may determine.

(3) In the event of any person referred to in subsection two of this section making default in the payment of any contribution payable to the Colonial Treasurer within such times as may be determined by the Colonial Treasurer such contributions shall constitute a debt due and payable to the Colonial Treasurer and shall be recoverable in any court of competent jurisdiction.

Amendment of Act No. 32, 1931. New sec. 3A.**Application of Act to ferries.**

12. (1) The State Transport (Co-ordination) Act, 1931-1947, is amended by inserting next after section three the following new section:—

3A. (1) The Governor may by proclamation published in the Gazette declare that the provisions of this Act relating to the licensing of public

public motor vehicles or such of those provisions as may be specified in such proclamation shall, as from a date to be specified in such proclamation, apply, mutatis mutandis, to and in respect of ferries or such class or classes of ferries as may be specified in such proclamation.

(2) The proclamation shall, by reference to sections, subsections or otherwise, set out the provisions declared to apply as aforesaid, with such modifications and adaptations as the Governor may deem necessary for the purposes of the application of such provisions to ferries to which such proclamation relates.

The provisions so set out shall—

- (a) be in the form of a Schedule to be inserted in this Act;
- (b) be thereafter printed by the Government Printer as a Schedule to this Act in any reprint thereof; and
- (c) have the same force and effect as if originally inserted in this Act.

(3) Any proclamation under this section may from time to time be rescinded or substituted by a like proclamation.

(2) The State Transport (Co-ordination) Act, 1931, as amended by subsequent Acts and by this section, may be cited as the State Transport (Co-ordination) Act, 1931-1950.

13. (1) The Transport (Division of Functions) Act, 1932-1947, is amended by inserting at the end of section four the following new subsection:—

Amendment
of Act
No. 31,
1932, sec. 4.

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

(2) The Transport (Division of Functions) Act, 1932, as amended by subsequent Acts and by this section may be cited as the Transport (Division of Functions) Act, 1932-1950.