

SOUTH AUSTRALIAN RAILWAYS COMMISSIONER'S ACT, 1936.

No. 2303 of 1936.

An Act to consolidate certain enactments relating to the construction, maintenance, and management of Government railways, and for other purposes.

[Assented to 19th November, 1936.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

PART I.

PART I.

PRELIMINARY.

1. This Act may be cited as the "South Australian Railways Commissioner's Act, 1936", and shall come into operation on a day to be fixed by proclamation. Short title and commencement.

2. (1) This Act is a consolidation of the enactments set out in the first schedule to this Act, and those enactments are repealed. Repeal.

(2) Notwithstanding the repeal—

(a) any proceeding which was commenced under any of the repealed Acts and was at the time of the passing of this Act pending in any court or before any other authority may be proceeded with and completed and the decision and any order made in those proceedings may be enforced under this Act :

(b) every right, liability, forfeiture and penalty acquired, incurred or imposed under any of the repealed Acts and every offence committed against any of the repealed Acts, before the passing of this Act may be tried, inquired into, enforced or punished under this Act as if this Act had been in force when

Commencement of Act: This Act was proclaimed to come into operation on the 1st day of June, 1937: *Gazette* 25th March, 1937, p. 644.

that right, liability, forfeiture or penalty was acquired, incurred or imposed, or that offence was committed :

- (c) all operations and works which at the time of the passing of this Act are in progress shall be completed under this Act, as if this Act had been in force when they were commenced and they had been commenced under this Act.

(3) Wherever in any Act, or any regulation, or any other document or instrument of any kind, any reference is made to any of the said repealed Acts, or to any provision of any of those Acts, that reference shall be read and construed as a reference to this Act, or to the corresponding provision of this Act.

(4) The mention of particular matters in this section shall not affect the applicability to this Act of the Acts Interpretation Act, 1915, to the extent that that Act is not inconsistent with any provision of this Act.

Incorporation.
414, 1887, s. 5.

3. This Act is incorporated with the Compulsory Acquisition of Land Act, 1925, and this Act and that Act shall be read as one Act ; but if any provision of this Act is inconsistent with that Act, this Act shall prevail.

Division of
Act.

4. This Act is divided into Parts as follows :—

PART I.—Preliminary: sections 1–5.

PART II.—The South Australian Railways Commissioner : sections 6–24.

PART III.—Officers and employees : sections 25–53.

PART IV.—Construction of railways : sections 54–80.

PART V.—Ownership and operation of railways and other services : sections 81–123.

PART VI.—Interstate railways : sections 124–131.

PART VII.—Regulations and by-laws : sections 132–135.

PART VIII.—Miscellaneous : sections 136–147.

Interpretation.
414, 1887, s. 2.
1000, 1910,
ss. 3, 4.

5. (1) In this Act, unless the context otherwise requires, or some other meaning is clearly intended—

“ branch ” means a branch of the Railway Service determined by the Commissioner by regulation :

- “ Minister ” means the Minister of the Crown by whom this Act is for the time being administered :
- “ Commissioner ” means the South Australian Railways Commissioner for the time being in office :
- “ railways ” means all railways for the time being vested in or under the control of the Commissioner :
- “ railway service ” or “ service ” means employment under the Commissioner :
- “ additional person ” means a person not at the material time in a permanent office in the railway service :
- “ special Act ” means any Act passed before or after the passing of this Act and authorising the construction of a railway on behalf of the State or of a railway which has become vested in the Commissioner :
- “ prescribe ” and “ determine ” mean prescribe and determine by regulations under this Act :
- “ vessel ” includes ship, boat, barge, lighter, and craft of every kind, and whether a steam or other vessel :
- “ permanent ” used in reference to any office or employment under the Commissioner, means an office or employment remunerated by an annual salary fixed and determined by regulations under this Act or any Act repealed by this Act.

(2) All officers or servants under the control of the Commissioner (in this Act designated “ officers and employees ”) shall be deemed to be officers and servants of the Commissioner.

PART II.

PART II.

THE SOUTH AUSTRALIAN RAILWAYS. COMMISSIONER.

6. (1) For the purpose of carrying this Act into execution, there shall be a Commissioner by the name of “ The South Australian Railways Commissioner.”

Office of
Commissioner.
414, 1887, s. 7.
612, 1894, s. 2.

(2) The Commissioner shall be a body corporate and shall have perpetual succession and a common seal, and shall be capable in law of suing and being sued, and shall have power to take, purchase, sell, lease, and hold lands, tenements, and hereditaments, goods, chattels, and other property, for any of the purposes of this Act, subject to the restrictions contained in this Act.

Judicial notice
of seal of
Commissioner.
414, 1887, s. 8.

7. All courts, judges, and persons acting judicially, shall take judicial notice of the common seal of the Commissioner affixed to any deed, and shall presume that that seal was properly affixed to that deed.

Appointment
of Com-
missioner.
414, 1887, s. 11.

8. (1) The Commissioner shall be appointed by the Governor, and, except as provided in this section, shall hold office for seven years from the date of his appointment.

(2) The Commissioner shall not be removable from his office during its term unless—

(a) an address praying for such removal is presented to the Governor from both Houses of Parliament in one session, or from one House in each of two consecutive sessions ; or

(b) he is suspended and removed as provided in the next subsection.

(3) The Governor may suspend the Commissioner from office for inability or misbehaviour, and if he does so, a full statement of the cause of the suspension shall be laid before both Houses of Parliament if then sitting, or if they are not then sitting, within seven days after the commencement of the next session. If an address is not within one calendar month afterwards during that session presented to the Governor by the Legislative Council or House of Assembly, praying for the removal of the Commissioner from his office, the Commissioner shall be restored to his office ; but if such an address is so presented, the Governor may remove the Commissioner from his office, which thereupon shall become vacant.

(4) When the Commissioner ceases to hold office by effluxion of time he shall be eligible for re-appointment.

Office of
Commissioner,
how vacated.
414, 1887, s. 12.

9. If the Commissioner—

(a) wilfully absents himself from his duty for a period of fourteen consecutive days, except on leave granted by the Governor, which the Governor is hereby authorised to grant ; or

(b) dies ; or

(c) resigns ; or

(d) becomes bankrupt ; or

(e) applies to take the benefit of any Act for the relief of insolvent debtors ; or

(f) by deed or writing compounds with his creditors, or makes an assignment of his estate or effects or future salary for their benefit ; or

- (g) becomes in any way, except as Commissioner, concerned or interested in any bargain or contract made by or on behalf of the Commissioner ; or
- (h) in any way participates or claims to be entitled to participate in the profit of any such bargain or contract, or in any benefit or emolument arising from it ; or
- (i) becomes a member of the Executive Council or of either House of Parliament ; or
- (j) occupies any office or engages in any employment other than in connection with the duties of his office of Commissioner,

he shall, on proof thereof to the satisfaction of the Governor, be deemed to have forfeited his office as Commissioner, and the Governor shall thereupon declare the office vacant.

10. The Governor may fill any casual vacancy which occurs in the office of Commissioner, and any appointment to such a vacancy may be for a term of less than seven years.

Governor in Council to fill casual vacancy.
414, 1887, s. 13

11. (1) In case of the illness, suspension, or absence from the State, of the Commissioner, the Governor may appoint some other person to act as the deputy of the Commissioner during that illness, suspension, or absence.

Deputy Commissioner.
414, 1887, s. 14.

(2) Every such person shall, during the time for which he acts as deputy, have all the powers and perform all the duties of the Commissioner.

Contracts.

12. (1) The Commissioner may in his corporate name enter into contracts with any persons for the execution of any work authorised by this Act to be done by the Commissioner, or which he thinks proper to do or to direct to be done under or by virtue of the powers conferred on him by this Act, or for furnishing materials or labour, or for providing proper engines or other power, or for any matters and things whatsoever necessary for enabling him to carry the purposes of this Act into full and complete effect, in such manner and upon such terms and for such sum of money and under such stipulations, conditions, and restrictions as the Commissioner thinks proper.

Power of Commissioner to make contracts, &c.
414, 1887, s. 58
1161, 1914,
s. 4.

(2) Every such contract shall be in writing, and shall specify the works to be done, the materials to be furnished, the prices to be paid for the works and materials, and the times within which the works are to be completed, and materials or labour furnished, and the penalties to be suffered in case of non-performance of the contract.

(3) Every such contract may, if the Commissioner thinks fit, also specify the person to whose satisfaction it is to be carried out, and the mode of determining any dispute which may arise concerning or in consequence of the contract.

(4) The Commissioner shall not enter into any such contract for the supply, either directly or indirectly, from places outside South Australia of materials, engines, or other power, or any other matter or thing, without the sanction of the Governor.

(5) In this section "materials" means engines and other power and rolling-stock, but does not include materials for making engines, power, or rolling-stock.

Contracts by
the Com-
missioners, how
to be entered
into.

414, 1887, s. 62.

13. (1) The power of the Commissioner to make contracts may lawfully be exercised as follows, that is to say :—

Any contract which if made between private persons would be by law required to be in writing and under seal, the Commissioner may make in writing in his corporate name under his common seal, and in the same manner may vary or discharge any such contract :

Any contract which if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith, the Commissioner may make in writing in his corporate name, signed by the secretary and the Commissioner, and in the same manner may vary or discharge any such contract.

(2) Every contract made according to this section and duly executed by the parties thereto shall be effectual in law and binding upon the Commissioner and all other parties thereto, their successors, executors, or administrators, as the case may be.

(3) On any default in the execution of any such contract either by the Commissioner or by any other party thereto, any action may be brought and any damages and costs recovered either by or against the Commissioner in his corporate name or the other parties failing in the execution of the contract, which might be brought and recovered if the contract had been made between private persons only.

Commissioners
may compound
for breach of
contracts

414, 1887, s. 63.
See 512, 1891,
s. 5.

14. The Commissioner may compound and agree with any person who has entered into any contract under the authority of this Act, or against whom any action or suit is brought for any penalty contained in any such contract or in any bond or other security for the performance of any such contract, or for or on account of any breach or non-performance of any such

contract, bond, or security, for such sum of money or other recompense as the Commissioner thinks proper.

15. (1) The Commissioner shall not in pursuance of the powers conferred on him by this Part enter into any contract, or compound with any person, without the approval of the Minister.

Approvals to contracts.
512, 1891, s. 5.

(2) The Commissioner shall not enter into any contract⁷ the performance of which extends over a period of more than one year without the approval of the Governor.

16. If the Commissioner is in any way concerned or interested in any bargain or contract made by or on behalf of the Commissioner, or in any way participates or claims to be entitled to participate in the profit or any benefit or emolument arising from any such bargain or contract, he shall be guilty of a misdemeanour, and liable to a fine not exceeding five hundred pounds, or to imprisonment for any term not exceeding three years, or to both of these punishments.

Commissioner personally interested in contracts.
414, 1887, s. 70.

Receipts and Expenditure.

17. All money appropriated by Parliament for the construction, maintenance, or management of the railways and for works in connection therewith, shall be expended under the control and management of the Commissioner.

Expenditure of money appropriated by Parliament.
414, 1887, s. 51.
512, 1891, s. 3.

18. All money payable to the Commissioner under this Act shall be collected and received for or on account of the General Revenue, and shall from time to time, in such manner as the Governor prescribes be paid to the Treasurer for the public purposes of the State.

Payment of receipts of railway receipts into revenue.
414, 1887, s. 52.

19. Every Act for the regulation of the collection, receipt, or disbursement of moneys on account of the public service, or of the keeping or auditing of the public accounts, and all regulations made thereunder, shall, so far as the Governor declares, apply to the Commissioner and to all officers acting under his control.

Audit Act to apply to Commissioner.
512, 1891, s. 7.

20. Whenever by any Act, by-law or regulation the Commissioner is authorised or empowered to prohibit or does prohibit any person or class of person from doing while in or upon

Power to charge licence fees.
912, 1906, s. 9.

s. 18. In *re* HARROLD BROTHERS, insolvents; *Ex parte* SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1900) S.A.L.R. 11; 6 A.L.R. (C.N.) 19; 6 Austn. Digest 52. Held (by the Commissioner of Insolvency) that debts due to the Railways Commissioner are Crown debts.

any railway premises any particular act or acts unless licensed so to do then and in every such case the Commissioner may charge such sums as he thinks fit, not exceeding two shillings and sixpence per month for each such licence.

Reports.

Quarterly
reports.

417, 1887, s. 49.

21. (1) In the first month in each quarter of every year, the Commissioner shall report in writing to the Minister—

- (a) the state of the traffic returns, with the approximate cost and earnings of trains per ton per train mile in respect of goods and passengers respectively carried during the past quarter ;
- (b) the general condition of the lines and accommodation for the traffic ;
- (c) whether any special rates have been made, and the reasons for making such rates ; and
- (d) a statement of appointments and removals of employees, with the circumstances attending each.

(2) Every such report shall be laid before Parliament forthwith after it is made, if Parliament is sitting, and if not then immediately upon the re-assembling of Parliament.

Annual reports.

414, 1887, s. 50.
Cf. U.K.
36 & 37 Vict.
c. 48, s. 31.

22. (1) The Commissioner shall prepare an annual report of his proceedings, and an account of all moneys received and expended during the preceding year.

(2) The annual report shall be laid before both Houses of Parliament in August in each year, if Parliament is then sitting, and if Parliament is not then sitting then within fourteen days after the commencement of the next ensuing session.

(3) The Commissioner shall also prepare estimates, in such form as the Governor directs, of receipts and expenditure for each period of twelve months ending on the thirtieth day of June.

List of
branches.

829, 1903, s. 10.

23. In January in each year, the Commissioner or some other responsible officer in the railway service, shall cause to be published in the *Gazette* a list of the branches in the railway service and the name of the officer having the charge or control of each branch.

Reports to be
furnished to
Minister.

414, 1887, s. 6.

24. All reports and accounts which are by this Act required to be laid before Parliament shall be furnished by the Commissioner to the Minister.

PART III.

PART III.

OFFICERS AND EMPLOYEES.

Appointment.

25. (1) The Commissioner may appoint such officers and employees as he thinks fit, and from time to time dismiss them. Appointment of officers. 414, 1887, s. 18.

(2) Every officer and employee shall hold his office during the pleasure of the Commissioner.

(3) The Commissioner shall pay such salaries, wages, and allowances to the officers and employees as he prescribes by regulation, and as Parliament appropriates for the purpose.

(4) All appointments to permanent offices in the railway service shall be made in manner mentioned in the following provisions of this Act.

26. The Commissioner may from time to time, appoint without extra salary, fit and proper officers of the railway service to be examiners of candidates for employment in each branch of the railway service, and may at any time accept the resignation of or remove any such examiners. Examiners. 414, 1887, s. 22.

27. (1) The Commissioner, whenever he requires to employ additional persons in the permanent offices of the railway service, shall cause the examiners to hold competitive examinations of the candidates for employment, in such subjects as the Commissioner prescribes. Additional appointments. 414, 1887, s. 23.

(2) The Commissioner shall give public notice of the time and place of those examinations and of the branches for which candidates are required, and of the subjects of examination.

(3) The names of all competitors who at the examinations satisfy the examiners as to their proficiency, shall forthwith be registered by the Commissioner in a book to be kept for that purpose, in the order of merit as determined by the examinations.

(4) All appointments of additional persons then or within one year after the date of such registration required for permanent offices in the branch for which the examinations were held, shall be made from the persons whose names are

s. 25. *CILENTO V. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER* (1927) S.A.S.R. 305; affirm-
ing *CILENTO V. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER* (1926) S.A.S.R.
175. S. 25 sets out the fundamental principle governing the tenure of officers
in the Railway Service—namely tenure at the pleasure of the Commissioner; and,
semble, the other provisions of the Act are not inconsistent with this section.
Where the Commissioner personally observes misconduct on the part of an
employee he may dismiss him under s. 25 without further investigation.

so registered, and in the order of that registration, the person whose name is registered first being appointed first and the others afterwards in regular sequence.

Additional persons to be appointed on probation.
414, 1887, s. 23.

28. (1) Each such appointment of an additional person to a permanent office shall be made to the lowest class in the branch to which it is made, and on probation only for a period of six months.

(2) After that period, and upon production of a certificate of fitness from the officer at the head of the branch in which the probationer is then serving, and upon proof to the satisfaction of the Commissioner that all the provisions of this Act, so far as they apply to that probationer, have been complied with, the appointment may be confirmed by the Commissioner.

Transfers and appointments without examination.
414, 1887, s. 26.

29. The Commissioner, if he thinks fit, may transfer officers and employees from one branch of the railway service to any class in another branch, and also may appoint to any class in any branch, without examination, additional persons of known ability.

Security from officers entrusted with money.
414, 1887, s. 20.

30. (1) Before any officer or employee entrusted with the custody and control of money enters upon his office, the Commissioner shall take sufficient security from him for the faithful execution of his office.

(2) The security so taken may be that of any incorporated company or guarantee society approved of by the Commissioner, and shall be in such form as the Commissioner directs by regulation.

Officers to account.
414, 1887, s. 21.

31. (1) Every officer and employee shall from time to time when required by the Commissioner, make out and deliver to him, or to any person appointed by him for that purpose, a true and faithful account in writing under his hand of all the money received by him on behalf of the Commissioner.

(2) That account shall state how and to whom and for what purpose the money has been disposed of, and together with the account the officer or employee shall deliver the vouchers and receipts for those payments, and shall pay to the Commissioner or any person appointed by him to receive the money, all money which appears to be owing from him upon the balance of the account.

32. (1) If any officer or employee fails to render an account, as required by the last preceding section of this Act, or to produce and deliver up all the vouchers and receipts relating to the account in his possession or power, or to pay the balance owing on the account when required, or if after being required he fails to deliver up to the Commissioner, or to any person appointed by him for the purpose, all papers and writings, property, effects, matters, and things in his possession or power relating to the execution of this Act or belonging to the Commissioner, then, on complaint thereof being made to a justice, that justice shall summon that officer or employee to appear before a special magistrate and two or more justices at a time and place to be set forth in the summons to answer that charge.

Summary recovery against persons failing to account.
414, 1887, s. 72.

(2) Upon the appearance of the officer or employee, or if he does not appear upon proof that the summons was personally served upon him or left at his last known place of abode, the special magistrate and justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by the officer or employee.

(3) If it appears either upon confession of the officer or employee or upon evidence or upon inspection of the account that any money of the Commissioner is in the hands of the officer or employee or is owing by him to the Commissioner, the special magistrate and justices may order the officer or employee to pay that money to the Commissioner.

(4) If he fails to pay the amount so ordered the special magistrate and justices may grant a warrant to levy it by distress, and in default of a sufficient sum being recovered by distress may commit the offender to gaol, there to remain without bail for a period not exceeding three months, unless the money is sooner paid.

33. (1) If any officer or employee neglects or refuses to make out any such account in writing, or to produce and deliver to the special magistrate and justices the vouchers and receipts relating to that account, or to deliver up any books, papers, or writings, property, effects, matters, or things in his possession or power belonging to the Commissioner, the special magistrate and justices may commit that offender to gaol there to remain until he has delivered up all the vouchers and receipts (if any) in his possession or power belonging to the Commissioner.

Penalty on refusing to deliver up documents.
414, 1887, s. 73.

(2) If the Commissioner or other person acting on behalf of the Commissioner makes an oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe that it is the intention of any such officer or employee to abscond, or that he has absconded, the justice before whom

the complaint is made may, instead of issuing his summons, issue his warrant for bringing the officer or employee before the special magistrate and two justices ; but no person executing such a warrant shall keep the officer or employee in custody longer than forty-eight hours without bringing him before a justice.

(3) The justice before whom the officer or employee is brought may either discharge him if he thinks there is no sufficient ground for his detention or order the officer or employee to be detained in custody, so as to be brought before a special magistrate and two justices at a time and place to be named in the order, unless the offender gives bail to the satisfaction of the justice for his appearance to answer the complaint of the Commissioner.

Commitment
not to
discharge
sureties.
414, 1887, s. 74.

34. No such proceedings against or dealing with any such officer or employee shall deprive the Commissioner of any remedy which he otherwise has against any surety of that officer or employee.

Overtime
payments.
414, 1887, s. 27.

35. The officer at the head of any branch of the railway service may, if he thinks fit, certify that in his opinion any officer or employee in his branch is entitled to a payment for overtime work, but no payment for overtime work shall be paid without the authority of the Commissioner.

Record Book,
414, 1887, s. 28.

36. The Commissioner—

- (a) shall keep a book, to be called the "Record Book", and shall record therein the names of all persons in the railway service, and the class, position or grade, length of service, salary, and such other particulars with regard to each such person as he thinks fit ; and
- (b) shall from time to time cause entries to be made in the Record Book of deaths, dismissals, resignations, promotions, and reductions ; and
- (c) shall in the month of July in every year publish in the *Gazette* a list arranged according to classes and branches of the persons then employed in the railway service.

Officer taking
fees.
414, 1887, s. 71.

37. If any person employed by the Commissioner exacts, takes, or accepts on account of anything done by virtue of his office, or in relation to any function of the Commissioner, any fee or reward whatsoever other than the salary, rewards, or

allowances allowed or sanctioned by Parliament, or is in any way concerned or interested in any bargain or contract made by or on behalf of the Commissioner, otherwise than as a member only, but not as a director or officer of any registered, incorporated, or joint-stock company with which any such bargain or contract is made, he may be removed from office, and if so removed shall be incapable of being afterwards employed by the Commissioner, and shall also be guilty of a misdemeanour, and liable to a fine not exceeding fifty pounds, or to imprisonment for any period not exceeding two years.

Punishment for Misconduct.

38. (1) Any officer in charge of a station on any of the railways may temporarily suspend at that station any employee of inferior rank, position, or grade until the officer at the head of that employee's branch has dealt with the suspension of that employee.

Power of Commissioner and officers to punish for misconduct.

414, 1887, s. 76.
Of U.K.
3 & 4 Vict.
c. 97, s. 13;
5 & 6 Vict.
c. 55, s. 17.

(2) Any charge brought against any employee for the breach of any rule or regulation, or for misconduct, may be investigated and dealt with by the Commissioner, who may suspend that employee, or if he has already been suspended by the officer at the head of his branch or any other officer, may further suspend him for a period not exceeding six months, without salary or wages, or may inflict a fine upon the employee, to be deducted from his pay, or may dismiss him.

39. (1) Notwithstanding any Act, by-law, or regulations to the contrary, the officer at the head of each branch of the railway service may, in the prescribed manner, if any employee in his branch has been guilty of misconduct, or of breaking any rule, by-law, or regulation of the railway service—

Power of heads of branches to punish for misconduct.
829, 1903, s. 7.

- (a) caution, admonish, or censure him :
- (b) suspend him :
- (c) fine him a sum not exceeding five pounds :
- (d) reduce him in rank, position, grade, or pay.

s. 38. CILENTO V. THE SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1927) S.A.S.R. 305; affirming CILENTO V. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1926) S.A.S.R. 175. Where the Commissioner personally observes misconduct on the part of an officer or employee, he may dismiss him without an investigation under s. 38. Observations on the conduct of investigations. *Semble*, s. 38 does not confer on an officer any right to a quasi judicial hearing in respect of a charge made against him. *Semble*, also, the power of investigation conferred on the Commissioner by s. 38 (2) must be exercised fairly, but does not impose any fetter on the arbitrary power to dismiss conferred by s. 25.

(2) Every such employee shall, subject to this Part, have the right of appeal to the board constituted by this Part, or to the Commissioner, as the case requires.

Appeals to Commissioner.

Appeals to
Commissioner
against fines.
829, 1903, s. 8.

40. The Commissioner shall first hear any appeal by an employee against a fine inflicted upon him by any officer at the head of a branch of the railway service, and may confirm or modify any decision of that officer.

Costs on appeal
to Com-
missioner.
829, 1903, s. 9.

41. Where any further appeal is made from any decision of the Commissioner, and on such appeal the decision of the officer is confirmed, the board may award costs against the appellant, as it may think fit.

Constitution of the Railway Service Appeal Board.

Constitution of
board.
829, 1903, ss.
11, 12, 13.

42. (1) For the purposes of this Act a board is hereby constituted, to be called "The Railways Service Appeal Board", and in this Part referred to as "the board."

(2) The board shall consist of five members, as follows:—The Chief Engineer for Railways, the Chief Mechanical Engineer, the General Traffic Manager, the Secretary to the Commissioner, and one person to be elected by and from the employees of the railway service.

(3) The Governor shall appoint a secretary to every board constituted under this Act.

Retirement of
elected
members.
829, 1903, s. 14.

43. Subject to this Part, the elected member of the board shall retire on the thirty-first day of December, one thousand nine hundred and forty, and on a like date at the expiration of every six years thereafter.

Extraordinary
vacancies.
829, 1903, ss.
15, 17.

44. (1) If any member of the board is absent for three consecutive meetings, or becomes physically or mentally incapable of acting, or goes to reside abroad, or resigns, or desires to be discharged, or is guilty of misconduct, or leaves or is dismissed or discharged for misconduct from the railway service, the Governor shall declare his office vacant; and if that person is not the elected member of the board the Governor shall appoint some other person to act in his place, or if that person was elected by the railway officers or employees, an extraordinary election shall take place.

(2) Any casual or extraordinary vacancy on the board occurring in any way not mentioned in subsection (1) shall be filled by the Governor.

Appeals to the Railways Service Appeal Board.

- 45.** The board shall, except when otherwise provided, hear and determine all appeals instituted or made by any officer or employee in the railway service from any ruling, direction, or decision concerning himself, whereby his character or position may be affected in any manner whatsoever, and may confirm, modify, or otherwise deal with the decision appealed against and make any such order as to the board seems reasonable and just.
- Board to
hear appeals.
829, 1903, s. 18
23.
- 46.** (1) Every appeal to the board shall be lodged with the secretary to the board, or some officer appointed for that purpose by the board, within fourteen days after the date of the decision which is appealed against, and shall be heard within thirty days of the appeal being lodged.
- Mode of appeal.
829, 1903, ss.
19, 20.
- (2) The appellant shall set forth—
- (a) a concise statement of his case :
- (b) the grounds of the appeal :
- (c) the name and address of the appellant.
- 47.** The secretary shall immediately forward the appeal to the chairman of the board, who shall thereupon—
- Secretary to
forward
appeal to
Chairman.
829, 1903, s. 21.
- (a) fix a time and place for the hearing :
- (b) cause notice to be given to the other members of the board and the parties directly interested of that date and place of hearing.
- 48.** The chairman of the board or other person acting as chairman at the hearing of any appeal may administer an oath or affirmation to any witness at the hearing of the appeal, and shall, on application of the appellant, administer an oath or affirmation to all witnesses.
- Chairman
may
administer
oath.
829, 1903, s. 22.
- 49.** On any appeal the decision of three members of the board shall be the decision of the board
- Majority
decision.
829, 1903, s. 23.
- 50.** Every decision of the board shall be final, and shall be given effect to by the Commissioner or other controlling or responsible officer of the railways.
- Every decision
of board to be
final.
829, 1903, s. 24.

s. 45. CILENTO v. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1927) S.A.S.R. 305. The question whether there is an appeal to the Railways Service Appeal Board against the dismissal of an officer or employee discussed, but not decided.

Commissioner
to produce
books, &c.
829, 1903, s. 25.

51. The Commissioner shall, when required in writing by the chairman or secretary of the board, either by himself or some accredited officer, produce all books, papers, writings, and documents in his possession or control having reference to or connected with any appeal.

Regulations as
to board.
829, 1903, s. 26.

52. The Governor may make regulations—

- (a) for the conduct of the elections of the persons required to be elected to the Railways Service Appeal Board :
 - (b) for the conduct of appeals made to the Commissioner and for giving effect to any decisions on those appeals :
 - (c) for the conduct of inquiries by officers, and for giving effect to any decisions thereunder :
 - (d) providing facilities for the officers and employees of the railway service to vote at such elections :
 - (e) for the attendance of elected persons at any sittings of the board to which they are elected :
 - (f) for effectually carrying out the provisions of this Part, relating to appeals where no special provision has been made or defined :
 - (g) for the appointment of a chairman and of a secretary :
- and such regulations, when published in the *Gazette*, shall have the effect of law.

Transfer of certain functions.

Functions of
Engineer-in-
Chief as to
railways con-
ferred upon
Chief Engineer
for Railways.
988, 1909, s. 4.

53. (1) All the functions of the Engineer-in-Chief under—

- (a) any regulations and by-laws made by the Commissioner or any of his predecessors ; and
- (b) any agreements and contracts entered into by the Commissioner or any of his predecessors

before the eleventh day of December, nineteen hundred and nine, are hereby transferred to and shall be performed by the Chief Engineer for Railways ; and all the powers and duties conferred and imposed upon the Engineer-in-Chief by any such regulations, by-laws, contracts, and agreements are hereby transferred to and shall, after the passing of this Act, be exercised and discharged by the Chief Engineer for Railways.

(2) As regards any thing done or omitted to be done, or any thing to be done or omitted to be done, after the eleventh day of December nineteen hundred and nine, wherever in any such regulation, by-law, contract, or agreement the Engineer-in-Chief is referred to, that reference shall be deemed to be to the Chief Engineer for Railways instead of to the Engineer-in-Chief.

PART IV.

PART IV.

CONSTRUCTION OF RAILWAYS.

54. The Commissioner shall construct all lines of railway and all works which he is authorised to construct by any Act whether passed before or after the passing of this Act.

Duty of Commissioner to construct railways.
414, 1887, s. 45, Pt.

55. (1) Before the introduction into the House of Assembly of any Bill authorising the construction of any new railway, the Commissioner shall transmit to the Minister a statement under his seal showing his estimate of the cost of constructing that railway, and of the traffic and other returns likely to be derived from it.

Commissioner to prepare estimated cost of proposed lines.
417, 1887, s. 47.

(2) The Minister shall, before that introduction, lay the statement upon the table of the House of Assembly.

56. (1) The Commissioner may, for the purpose of constructing, making, or maintaining any railway authorised to be constructed, or any proper works or conveniences connected with or for the purposes of any such railway, enter upon, use, and take such lands as are, or are deemed necessary.

Power to enter upon lands.
32, 1876, s. 3.
1392, 1919, s. 3.
Cf. U.K.
5 & 6 Vict.
c. 55, s. 15;
8 & 9 Vict.
c. 20, s. 45;
26 & 27 Vict.
c. 92, s. 8.

(2) With respect to every road shown upon any plan which is referred to in any special Act and shows the line of railway thereby authorised, the Commissioner shall have the following powers—

(a) as regards any such road or part of any such road which is within a district or municipality, all the powers conferred by the Roads (Opening and Closing) Act, 1932, upon the council of that district or municipality;

(b) as regards any such road or part of any such road which is not within a district or municipality, all the powers conferred by the Roads (Opening and Closing) Act, 1932, upon the Commissioner of Highways.

57. (1) The Commissioner, and all surveyors employed by him, and all persons acting under the directions of the Commissioner or those surveyors, may, for the purpose of surveying any line of railway, for the making of which it is contemplated to obtain Parliamentary sanction, enter and remain for a reasonable time upon any land, and may drive and leave pegs in, and make and leave other survey marks on any land.

Power to enter land in respect of contemplated railways.
32, 1876, ss. 4, 5.

s. 56. C. A. MACDONALD LTD. v. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1911) 12 C.L.R. 221; affirming MACDONALD v. S.A. RAILWAYS COMMISSIONER (1909) S.A.L.R. 135. *Seemle*, s. 56 gives no power to take land compulsorily in the absence of a Special Act authorising the undertaking for which the land is required.

(2) The owner or occupier of any land so entered upon shall be entitled to compensation for any damage or injury sustained in exercise of the powers conferred by this section, and that compensation shall be ascertained in the manner in which compensation is directed to be ascertained under the Compulsory Acquisition of Land Act, 1925.

(3) The mention in this section of a particular right to compensation shall not be held to restrict any right to compensation conferred under any provision of the Compulsory Acquisition of Land Act, 1925.

No action in respect of any alleged trespass for survey purposes.
32, 1876, s. 7.

58. No civil or criminal proceeding shall be instituted or proceeded with against the Commissioner, or any surveyor employed by him, or any person acting under the directions of the Commissioner or any such surveyor, in respect of any alleged trespass committed in making any surveys connected with any railway authorised by any Act to be made or for the making of which Parliamentary sanction is contemplated.

Pulling up, &c., survey marks.
32, 1876, s. 8.

59. If any person wilfully, without the written permission of the Commissioner, pulls up, removes, destroys, or injures, any peg or other survey mark driven, made or put up whether before or after the passing of this Act, by or under the direction of the Commissioner, or any surveyor employed by him, or any person acting under the directions of the Commissioner or any such surveyor, in connection with any line of railway authorised by any Act to be constructed or for the construction of which Parliamentary sanction is contemplated, he shall be guilty of an offence punishable summarily and liable to a fine not exceeding fifty pounds, or to imprisonment for a term not exceeding six months.

Commissioner may make deviation to be delineated in plans, but no terminus to be altered.
32, 1876, ss. 3, 9.
Of. U.K.
8 & 9 Vict.
c. 20, s. 81.

60. (1) The Commissioner may make such deviations, whether lateral or as to level, from the line of any railway authorised by any Act to be constructed as he deems expedient for obtaining easier gradients or better serving the public convenience.

(2) Before making any such deviations the Commissioner shall cause those deviations to be delineated in plans (which shall be deposited in the office of the Surveyor-General, at Adelaide, and signed by the Commissioner and by the Chief Engineer for Railways) and shall cause copies of those plans to be laid before both Houses of Parliament for the space of twenty days at least: Provided that nothing herein contained shall empower the Commissioner to alter any terminus of any line of railway authorised to be constructed.

61. (1) The Commissioner, in the construction of any line of railway authorised by any Act to be constructed, may carry the line on the level across such roads as he thinks fit.

Level crossings and gates.

32,1876, s. 10.
6, 1858, s. 2.
Cf. U.K.
2 & 3 Vict.
c. 45, s. 1;
5 & 6 Vict.
c. 55, s. 9;
8 & 9 Vict.
c. 20, ss. 46,
47;
23 & 24
Geo. 5 c. 53,
s. 42.

(2) The Commissioner shall not be obliged to construct gates at any level crossing, but where no gates are constructed he shall construct an open ditch or ditches across the railway, or other works sufficient to prevent the straying of cattle or horses on the railway: Provided that the Commissioner shall not be obliged to construct any such ditches at any part of the line of railway which he is not bound to fence.

62. The Commissioner shall not be bound to fence or to make any compensation in respect of the fencing of any line of railway authorised by any Act assented to on or after the twenty-seventh of July, eighteen hundred and seventy-six, where that line abuts upon waste or other lands of the Crown, whether unoccupied, or leased for pastoral, or mining, or other purposes or upon any waste or other lands of the Crown, granted or leased after the twentieth day of September, eighteen hundred and seventy-six.

Commissioner not bound to fence or make compensation when railway abuts on Crown lands
32, 1876, s. 12.
Cf. U.K.
5 & 6 Vict.
c. 55, s. 10.

63. (1) The Commissioner may stop and close, either wholly or in part, any road at its point of intersection by any line of railway authorised by any Act to be constructed.

Stopping roads at crossings.

32, 1876,
ss. 10, 11.

(2) The owners of all lands which abut upon any road so stopped or closed shall be entitled to receive full compensation in respect of any loss or damage occasioned by that stoppage or closing

(3) When any road has been so stopped or closed in whole or in part, the Commissioner may convey that road, so far as it is stopped or closed, or any part thereof, to the owner of the land upon which it abuts.

64. If in the course of constructing any railway, the Commissioner uses or interferes with any road, he shall make good all damage done by him to that road.

Repair of roads.

7, 1847, s. 53.
U.K. 8 & 9
Vict. c. 20,
s. 58 (part).

Railways connecting with Wharves.

65. (1) The Commissioner may, with the approval in writing of the Governor, lay down in any street or road in any municipality or in any town or township in any district council district a line or lines of railway connecting any line of railway constructed within the municipality, town, or township under

Commissioner may connect authorised railways to wharves in seaport towns.
1838, 1927, s. 3.

the authority of any Act of Parliament or under the authority of the council of the municipality or district, to any wharf or wharves in the same municipality, town, or township.

(2) Before laying down in any such street or road as mentioned in subsection (1) any such line or lines of railway as mentioned in that subsection, the Commissioner shall at least fourteen days before commencing so to do, give notice of his intention to the council of the municipality or district in which it is intended to lay the line or lines. The council may, at any time prior to the commencement of the work of laying such line or lines, make such representations to the Governor and the Commissioner as it thinks fit, and the Commissioner and the Governor shall consider those representations.

(3) Where the Commissioner before the fifth day of January, nineteen hundred and twenty-eight, laid down in any such street or road as mentioned in subsection (1) of this section any such line or lines of railway as mentioned in that subsection, or is at the time of the commencement of this Act engaged in so doing, and has at any time obtained the approval in writing of the Governor to so doing, the Commissioner shall be deemed to have been empowered by law to lay down such line or lines of railway.

Sidings.

Power of
Commissioner
to construct
railway sidings.
1933, 1929, s. 3.
Cf. U.K.
4 Edw. 7
c. 19, s. 2.

66. (1) The Commissioner may construct any line or lines of railway connecting any other line of railway with any premises occupied by any person, and may on behalf of any such occupier of premises construct any line or lines of railway connecting any other line of railway with those premises, and for any such purpose may lay down the said line or lines of railway in any street or road.

(2) Subject as hereinafter mentioned no such line or lines of railway shall be laid down in a street or road within a municipality or district council district without the consent in writing of the municipal council or district council thereof.

(3) If a municipal or district council for one month after any application for consent as mentioned in subsection (2) hereof refuses or neglects to give its consent as aforesaid the Commissioner or other person making the application for consent may appeal to the Minister by memorial setting out the facts and the grounds of the appeal.

(4) The Minister shall hear and determine the appeal in such manner as he thinks just, and may for that purpose appoint any officer to hold an inquiry into the matter and make a

report to him, and may act on any such report. The council shall be entitled to be heard on the appeal.

(5) If the Minister allows the appeal he shall give such directions as he thinks fit for carrying his decision into effect, and all such directions shall be complied with by the council and all parties concerned.

67. The Commissioner may use any such line or lines of railway in the same manner and to the same extent as he is by law authorised to use any other line of railway constructed pursuant to any other Act, and the first-mentioned line or lines of railway may be used by the occupier of the premises aforesaid if authorised in that behalf in writing by the Commissioner in such manner and to such extent as is so authorised.

Power to
work sidings.
1933, 1929, s. 4.

68. All lines of railway constructed or used before the twelfth day of December, nineteen hundred and twenty-nine, connecting any other line of railway and any premises occupied by any person other than the Commissioner shall be deemed to have been lawfully constructed or used as if this Act had been enacted before the construction or use thereof and the necessary consent and authority to the construction and use thereof had been obtained.

Validating
provisions.
1933, 1929, s. 5.

Maintenance of roads in which railways are constructed.

69. The Commissioner shall, in respect of every line of railway laid down under this Act or any Act repealed by this Act in any street or road in any municipality or district council district, whether laid down before or after the passing of this Act, at his own expense, at all times keep in good condition and repair—

Liability of
Commissioner
to maintain
roadway.
1933, 1929, s. 6.

(a) so much of the street or road as lies between the rails of the line of the railway; and

(b) so much of the street or road as extends eighteen inches beyond the rails on each side of the line of railway.

s. 69. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER v. BARNES (1927) 40 C.L.R. 179; 10 Austr. Digest 148; affirming BARNES v. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1926) S.A.S.R. 469. Where a railway is laid on a road, it is the duty of the Commissioner to maintain not only the rails but the space between the rails; the space should be kept in a proper state for the passage of vehicles across the rails.

General provisions as to construction of railways.

Incidental powers for railway construction.
7,1847, s. 16.
U.K. 8 & 9
Vict. c. 20,
s. 16.

70. (1) Subject to this and any Special Act, and any Act incorporated therewith, the Commissioner may, for the purpose of constructing any railway authorised by a Special Act or any accommodation works connected therewith, execute any of the following works, that is to say :—

- (a) He may make or construct in, upon, across, under, or over any land, or any street, hill, valley, road, railroad, tramroad, river, canal, brook, stream, or other waters, within the lands described in the plans mentioned in the Special Act any temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences which he thinks proper ;
- (b) He may alter the course of any river which is not navigable or of any brook, stream, or watercourse, or of any branch of any navigable river, that branch not being itself navigable, within the land described in the plans mentioned in the Special Act, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such river or stream of water or of any road, street, or way, or raise or sink the level of any such river or stream, road, street, or way, in order the more conveniently to carry it over, or under, or by the side of the railway, as he thinks proper ;
- (c) He may make drains or conduits into, through, or under any land adjoining the railway, for the purpose of conveying water from or to the railway ;
- (d) He may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences as he thinks proper ;
- (e) He may from time to time alter, repair, or discontinue any work constructed under this section and substitute others in its stead ; and
- (f) He may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway.

(2) In exercise of the powers granted by this or the Special Act the Commissioner shall do as little damage as possible.

71. (1) The Commissioner for the purpose of constructing any railway may raise, sink, or otherwise alter the position of any watercourse, waterpipe, or gaspipe belonging to any house adjoining or near the railway, and also the mains and other pipes laid down by any Minister or company furnishing the inhabitants of any such house or place with water or gas, and remove all other obstructions to such construction.

Alteration of
water and gas
pipes.
7, 1847, s. 18.
U.K. 8 & 9
Vict. c. 20,
s. 18.

(2) In exercising his powers under this section the Commissioner shall do as little detriment and inconvenience to the Minister, company, or inhabitants, as the circumstances will admit, and shall act under the superintendence of the company to which the gaspipes belong, and of the Minister or district or municipal council or other public authority having control of the pavements, waterworks, sewers, roads, streets, highways, lanes, and other public passages and places where the mains, pipes, or obstructions are situate, or of his or its surveyor, if that Minister, council, or other authority or surveyor thinks fit to attend after receiving not less than forty-eight hours' notice for that purpose.

72. (1) The Commissioner shall not remove or displace any main or pipe (other than a private service pipe) syphon, plug, or other works belonging to any gas company, or to the Minister in control of any waterworks, or do anything to impede the passage of water or gas into or through the mains or pipes, until good and sufficient mains or pipes, syphons, plugs, and all other works necessary or proper for continuing the supply of water or gas as sufficiently as it was supplied by the main or pipe proposed to be removed or displaced, have at the expense of the Commissioner been made and laid down in lieu thereof, and are ready for use, in a position as little varying from that of the pipe or main proposed to be removed or displaced as is consistent with the construction of the railway, and to the satisfaction of the surveyor or engineer of the gas company or of the Minister having control of the waterworks, or in case of disagreement between that surveyor or engineer and the Commissioner, as a justice directs.

Duty not to
disturb pipes
until others
laid down.
7, 1847, ss. 19
20.
U.K. 8 & 9
Vict. c. 20,
ss. 19, 20.

(2) The Commissioner shall not lay down any such pipe contrary to any Act relating to the gas company or to the waterworks.

73. The Commissioner shall make good all damage done to the property of the gas company or of the Minister in control of the waterworks, by the disturbance of that property.

Duty to make
good all
damage.
7, 1847, s. 21.
U.K. 8 & 9
Vict. c. 20,
s. 21.

Penalty for obstructing construction of railway.

7, 1847, s. 24.
U.K. 8 & 9
Vict. c. 20,
s. 24.

74. If any person wilfully obstructs any person acting under the authority of the Commissioner in the lawful exercise of his power, in setting out the line of any railway, or pulls up or removes any poles or stakes driven into the ground for the purpose of so setting out the line of any railway, or defaces, or destroys any marks made for that purpose, he shall be guilty of an offence and liable to a fine of not more than five pounds.

Duty to substitute road where existing roads interfered with.

7, 1847, s. 48.
U.K. 8 & 9
Vict. c. 20,
s. 53.

75. If in the exercise of any power granted by this or the special Act, the Commissioner intends to cross, cut through, raise, sink, or use any part of any public or private road, tram road or railway (all of which are in this and the next two succeeding sections included in the term "road") so as to render the road impassable for, or dangerous, or extraordinarily inconvenient to persons, vehicles, or the persons entitled to the use thereof the Commissioner shall before commencing any such operations, construct a sufficient road instead of the road interfered with, and shall at his own expense maintain that substituted road in a state as convenient for persons and vehicles as the road interfered with, or as nearly so as possible.

Action for damage from interruption of road.

7, 1847, s. 50.
U.K. 8 & 9
Vict. c. 20,
s. 55.

76. If any person entitled to a right of way over any road so interfered with by the Commissioner suffers any special damage because the Commissioner has failed to construct another sufficient road before he interfered with the existing road, that person may recover the amount of that special damage from the Commissioner, by action in the Supreme Court.

Period for restoration of roads interfered with.

7, 1847, s. 51.
U.K. 8 & 9
Vict. c. 20,
s. 56.

77. (1) If the road so interfered with can be restored compatibly with the formation and use of the railway, it shall be restored to as good a condition as it was in when it was first interfered with by the Commissioner, or as near thereto as may be; and if the road cannot be restored compatibly with the formation and use of the railway, the Commissioner shall cause the new or substituted road, or some other sufficient substituted road, to be put into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow.

(2) The former road shall be restored, or the substituted road put into the condition prescribed by the preceding subsection within twelve months after the commencement of operations on the former road, or within such extended period as the council or other authority having the management of the road, may allow.

78. (1) Subject to section 62 and subsection (2) of this section, the Commissioner shall make and at all times maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, that is to say :—

Accommodation works.
7, 1847, s. 63.
U.K. 8 & 9
Vict. c. 20,
s. 68.

- (a) All convenient gates, bridges, arches, culverts, and passages over, under, or by the sides of or leading to or from the railway, which are necessary for the purpose of making good any interruptions caused by the railway to the use of the land through which the railway is made ; and those works shall be made forthwith after the part of the railway passing over that land has been laid out or formed, or during the formation thereof :
- (b) Sufficient posts, rails, hedges, ditches, mounds, or other fences for separating the land taken for the use of the railway from the adjoining land not taken, and protecting that land from trespass, and preventing the cattle of the owners or occupiers of the land from straying out of that land, by reason of the railway, together with all necessary gates made to open towards the adjoining land, and not towards the railway, and all necessary stiles ; and such posts, rails, and other fences shall be made forthwith after the taking of any such land, if the owner so requires and the other works mentioned in this paragraph shall be constructed as soon as conveniently may be :
- (c) All necessary arches, tunnels, culverts, drains, or other passages, either over or under or by the sides of the railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the land lying near or affected by the railway, as before the making of the railway, or as nearly so as may be ; and those works shall be made from time to time as the railway works proceed :
- (d) Proper watering places for cattle, where by reason of the railway the cattle of any person occupying any land lying near the railway, are deprived of access to their former watering places ; and such watering places shall be so made as to be at all times as sufficiently supplied with water as the

s. 78. In the matter of the HALLETT AND TEROWIE RAILWAY, and of the claims of JOHN WARWICK (1881) 15 S.A.L.R. 150. Held that the claimant, having received compensation for severance, was not entitled to require the Commissioner to provide accommodation works as mentioned in paragraph (d) of subsection (1).

former watering places, and as if the railway had not been made, or as nearly so as may be; and the Commissioner shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places.

(2) The Commissioner shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works if the owners and occupiers of the land have agreed to receive, and have been paid compensation in lieu of the construction of those works.

Owners to be allowed to cross until accommodation works are made.

7, 1847, s. 69.
U.K. 8 & 9
Vict. c. 20,
s. 74.

79. (1) Until the Commissioner has made the bridges or other proper communications which, under this Act or the Special Act, he is required to make between lands intersected by the railway, and no longer, the owners and occupiers of those lands, and any other persons whose right of way is affected by the want of those communications, and their servants may at all times freely pass and repass with carriages, horses, and other animals, directly (but not otherwise) across the part of the railway made in or through their respective lands, solely for the purpose of occupying those lands, or for the exercise of the right of way, and so as not to obstruct the passage along the railway, or to damage the railway.

(2) If the owner or occupier of any such lands has received or agreed to receive compensation from the Commissioner in lieu of the construction of any such communications, he and the persons claiming under him shall not be entitled so to cross the railway.

Penalty on persons omitting to fasten gates.

7, 1847, s. 70.
U.K. 8 & 9
Vict. c. 20,
s. 75.

80. If any person omits to shut and fasten any gate set up at either side of the railway for the accommodation of the owners or occupiers of the adjoining lands, as soon as he and the carriage, cattle, or other animals under his care, have passed through the gate, he shall be guilty of an offence and liable to a fine not exceeding two pounds.

PART V.

PART V.

OWNERSHIP AND OPERATION OF RAILWAYS AND
OTHER TRANSPORT SERVICES.*Property of the Commissioner.*

81. (1) There shall be vested in the Commissioner for purposes of this Act—

State railways
vested in the
Commissioner.
414, 1887, s. 32.
912, 1906, s. 2.

(a) all railways and rolling-stock constructed or acquired by or on behalf of the State, whether before or after the passing of this Act :

(b) the piers, wharves, jetties (not being piers, wharves, and jetties owned by the South Australian Harbors Board), stations, yards, and buildings connected or used with those railways, or forming or reputed to be part or parcel thereof :

(c) the fee simple of the land over or upon which those railways, piers, wharves, jetties, stations, yards, and buildings have been or are constructed or erected, and of the land included within the boundary fences of any of those railways, and all land outside those fences which has been acquired by the Commissioner or any of his predecessors in title under any Act authorising the taking of land for railway purposes ; and

(d) all the powers, functions, obligations, duties, immunities, and rights, by any Act, or portion of an Act, not hereby repealed, conferred, or imposed upon or vested in the Commissioner or any of his predecessors in title.

(2) All property of whatever kind vested in the Commissioner at the passing of this Act shall, subject to this Act, continue to be so vested.

(3) Nothing in this section shall authorise the Commissioner to erect any buildings upon or to prevent traffic over any portion of the road or thoroughfare which forms a construction in a northerly direction of the street known as Morphett Street.

82. Any Crown lands which are taken by the Commissioner under the authority of this Act, or of any Act incorporated herewith, shall vest in the Commissioner in fee simple for the purposes of this Act.

Crown lands
taken to vest
in Com-
missioner.
414, 1887, s. 33.

s. 81. BARNES v. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1926) S.A.S.R. 409; affirmed (on other grounds) by SOUTH AUSTRALIAN RAILWAYS COMMISSIONER v. BARNES (1927) 40 C.L.R. 179. *Seemle*, that an ancillary line of railway laid in a public street is not part of a railway within the meaning of s. 81, and is not vested in the Commissioner by virtue of s. 81.

Exemption
from rates and
taxes.

414, 1887, s. 35.
1332, 1918, s. 3.

83. No rates, taxes, or assessments shall be made, calculated, or charged upon any of the railways, or upon any pier, wharf, jetty, station, yard, building, or works vested in the Commissioner: Provided that this section shall not apply to any land or buildings which are in the use or occupation of private persons, nor, in determining what is ratable property within the meaning of the Local Government Act, 1934, shall this section apply to any building or part of a building occupied by any person as a dwelling, or any land occupied for the purposes of such dwelling.

Disposal of
surplus land.
1144, 1913, s. 3.

84. (1) Where it appears to the Commissioner that any land or other property of any kind vested in him for the purposes of this Act or otherwise for railway purposes, or for the purposes of any railway, is not required for any of the said purposes, he may, with the consent of the Governor—

- (a) sell that land or other property, or any estate, right, or interest therein; or
- (b) exchange that land or other property, or any estate, right, or interest therein, for any other land or property or any estate, right, or interest therein; or
- (c) dispose in any other way of that land or other property, or any estate, right, or interest therein,

for such price or other consideration as he deems sufficient and upon any terms and conditions which he deems proper.

(2) For the purpose of carrying out any such transaction as mentioned in subsection (1) of this section, the Commissioner may execute any assurance, deed, instrument, or writing, and do all such other things, as are deemed necessary or expedient.

(3) The Commissioner's receipt shall be a sufficient discharge for any moneys to be paid in pursuance of any such transaction, and it shall not be necessary for the person paying any such moneys to prove the consent of the Governor to any such transaction, nor to inquire whether or not a proper case has arisen for the exercise of any power conferred by this Act.

(4) All moneys received by the Commissioner in pursuance of any such transaction shall be held by him for the purposes of this Act.

(5) Nothing in this section shall derogate from any power vested in the Commissioner or any other person by this or any other Act or otherwise howsoever.

s. 83. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER V. CORPORATION OF BRIGHTON (1916) S.A.L.R. 240. Held (before the passing of Act 1332, 1918) that a dwelling-house owned by the Railways Commissioner and occupied by a stationmaster was not assessable for district council rates.

(6) The Commissioner shall in the month of July in every year present to the Governor a report stating—

- (a) particulars of all lands and properties (if any) with regard to which he has, during the period ending on the preceding thirtieth day of June, exercised any of the powers conferred by this section,
- (b) how he has dealt therewith respectively under this section, and
- (c) the price or other consideration, and the other terms or conditions (if any), in each case.

Every such report shall be laid before both Houses of Parliament within fourteen days after it is presented to the Governor if Parliament is in session, and if not, then within fourteen days after the commencement of the next session.

85. The Commissioner may lease any refreshment room, shed, office, shop, stall, coal gears, sites for storage or for erecting sheds, right of entrance into any station by hackney carriages, right of advertising or other convenience or appurtenance to any of the railways, for such term and at such rent as he may determine.

Power to lease railway premises.
414, 1887, s. 42.

86. The Commissioner may apply, in writing, from time to time, to the Minister for additional stores, plant, material, rollingstock, sheds, stations, and other accommodation which, in the opinion of the Commissioner, is required to enable him to meet the traffic requirements and the efficient working of the railways.

Additional stores.
414, 1887, s. 48.

Maintenance of railways.

87. The Commissioner shall supervise the railways and the accommodation thereto and maintain them in a state of efficiency, and shall see that persons travelling upon the railways are carried without negligence.

Maintenance of railways.
414, 1887, s. 45, Pt.

s. 87. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER v. BARNES (1927) 40 C.L.R. 179; 10 Austn. Digest 148; affirming BARNES v. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1926) S.A.S.R. 469. Where a railway is laid on a road, it is the duty of the Commissioner to maintain not only the rails but the space between the rails; the space should be kept in a proper state for the passage of vehicles across the rails.

BOND v. THE SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1923) 33 C.L.R. 273; 30 A.L.R. 277; 3 Austn. Digest 366; reversing BOND v. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER (1923) S.A.S.R. 205. Where the Commissioner had negligently omitted to light a railway platform on a dark night, and the plaintiff, visiting the railway on business walked too near the edge of the platform and fell off and was injured, held that the Commissioner was liable notwithstanding the plaintiff's knowledge of the station.

Maintenance
of bridges.

7, 1847, s. 41.
Cf. U.K.
8 & 9 Vict.
c. 20, s. 46
(part).

88. Every bridge by which a line of railway is carried over a road, or a road is carried over a line of railway, and the immediate approaches of, and all other necessary works connected with any such bridge, shall be maintained at the expense of the Commissioner.

Commissioner
may not
remove
workshops.

414, 1887, s. 46.

89. The Commissioner shall not remove or discontinue any of the workshops connected with the railways and in existence on the ninth day of December, eighteen hundred and eighty-seven, without the sanction of the Governor.

Milestones.

7, 1847, s. 89
U.K. 8 & 9
Vict. c. 20,
s. 94.

90. The Commissioner shall cause the length of the railway to be measured, and milestones, posts, or other conspicuous objects to be set up and maintained along the whole line thereof, at the distance of one mile from each other, with numbers or marks inscribed thereon denoting such distances.

Adjustment of
weights and
measures.

414, 1887, s. 44.

91. (1) The Commissioner shall cause all weights, measures, scales, balances, steelyards, beams, and other weighing machines in use upon any of the railways, or any of the stations, piers, wharves, or jetties, vested in the Commissioner, to be from time to time adjusted either on comparison with authorised copies of the standard weights and measures made under the Weights and Measures Act, 1934, or otherwise as the case may be, by some officer in the railway service in that behalf appointed by the Commissioner.

(2) Except as provided in this section, nothing in the Weights and Measures Act, 1934, shall apply to the railways, or to any station, pier, wharf, or jetty vested in the Commissioner.

Telegraphs, telephones, electricity.

Telegraphs and
telephones.

414, 1887, s. 54.
2185, 1934, s. 3.

92. (1) The Commissioner may do all or any of the following things :—

- (a) Construct and maintain lines of telegraphic and telephonic communication and lines for the transmission of electric current for light or power, on or leading to any land vested in the Commissioner or along the lines of any of the railways :
- (b) For any of the foregoing purposes erect, set up, lay down, and maintain on any road, street, or Crown lands any masts, posts, ends, wires, or lines of subterranean communication :
- (c) For any of the said purposes enter on any road, street or Crown lands and make any excavation or do

any other act or thing incidental to the exercise of any of the powers conferred by this section.

(2) The Commissioner shall not cut down, destroy, or injure any tree on any road unless he has first obtained the approval of the Minister administering the Highways Acts, 1926-1933.

Cf. U.K.
31 & 32 Vict.
c. 119, s. 24.

(3) Nothing in this section shall be deemed to authorise the Commissioner to construct, erect, set up, or lay down any lines, masts, posts, ends, wires or lines of subterranean communication in, over, or on any street or road for the purpose of supplying electric current to any premises used for residential or private business purposes in any case where at the time of the passing of the South Australian Railways Commissioners Act, 1934, electric current was supplied or distributed by any municipal or district council to those premises.

Cf. U.K.
7 & 8 Vict.
c. 85, s. 14.

(4) This section shall be deemed to have come into operation on the first day of June, eighteen hundred and eighty-eight.

93. (1) The Commissioner may sell and supply electric current to the public at any place where he was generating electricity on the twenty-ninth of November, nineteen hundred and thirty-four, if no other authority or person has a supply of electric current available for sale to the public at the time when the Commissioner commences to supply: Provided that the Commissioner shall not sell or supply electric current to the public within any municipality or district council district, except with the consent in writing of the council thereof.

Supply of
electric
current by
Commissioner.
2185, 1934, s. 4.

(2) Sections 496, 497, 498, 499, 500, 501, 505, 507, 508, 509, 510, 511, and 512 of the Local Government Act, 1934, shall, as far as practicable, apply to the Commissioner in the exercise of his powers under this section as if he were a council within the meaning of that Act.

94. All the telegraph posts, wires, instruments, and other telegraphic or telephonic apparatus belonging to the Commissioner at the time of the passing of this Act, shall continue to be vested in the Commissioner for the purpose of this Act.

Railway
telegraphs
vested in
Commissioner.
414, 1887, s. 34.

Carriage of goods and matters incidental thereto.

95. The Commissioner may use and employ locomotive engines or other moving power, and carriages and waggons to be drawn or propelled thereby, and may carry and convey upon the railway all such passengers and goods as are offered to him for that purpose, and may make reasonable charges in respect thereof not exceeding the amounts prescribed by-law.

Commissioner
to employ
locomotive
power,
carriages, &c.
7, 1847, s. 81.
U.K. 8 & 9
Vict. c. 20,
s. 86.

Depots for receipt and delivery of parcels.
414, 1887, s. 40.

96. The Commissioner may appoint places in the different centres of population as depots for the receipt and delivery of parcels or passengers' luggage to be forwarded to or received from any of the railways, and may contract with any person for the carriage of such parcels or passengers' luggage to and from any railway station or depot.

Contracts for loading or unloading goods.
414, 1887, s. 41.

97. The Commissioner may, in lieu of loading or unloading goods on or from any truck, shed, or vessel by temporary day labour, invite public tenders on such terms and conditions as he thinks fit for the performance of that work for a period not exceeding one year, and may accept any tender or invite fresh tenders, and may make a contract with the person whose tender is accepted.

Special conditions, if just and reasonable, may be made.
414, 1887, s. 43.

98. (1) The Commissioner may make special conditions for receiving, forwarding, or delivering any horse, cattle, or other animals, and any articles, goods, or things: Provided that no greater damages shall be recovered for the loss of or for any injury done to any such animal, whether that loss or injury arose through negligence or otherwise, beyond fifty pounds for any horse, twenty pounds for any head of cattle, or one pound for any sheep, pig, or other small animal unless the person sending or delivering the animal at the time of delivery declared it to be of higher value than that above mentioned, in which case the Commissioner may demand and receive by way of compensation for the increased risk and excess of care thereby occasioned a reasonable percentage upon the value so declared above the sums previously mentioned in this section, and which shall be paid in addition to the ordinary rate of charge.

(2) Any such percentage or increased rate of charge shall be ascertained and fixed by a by-law, and that by-law shall be affixed in some conspicuous place at the terminal stations of the railways to which it applies, and all persons affected thereby, shall be bound by such notice without further proof of the by-law having come to their knowledge.

s. 98. *WHITE V. SOUTH AUSTRALIAN RAILWAYS COMMISSIONER* (1919) S.A.L.R. 44; 3 Austn. Digest, 384. The following definition applicable in the construction of a consignment note issued by the Commissioner approved by the court:—"Wilful misconduct means misconduct to which the will is partly as distinguished from accident, and far beyond any negligence, even gross or culpable negligence, and involves that a person wilfully misconducts himself who knows and appreciates that it is wrong conduct on his part in the existing circumstances to do or fail or omit to do, as the case may be, a particular thing, and yet intentionally does or fails or omits to do or persists in the act, failure, or omission regardless of consequences, or acts with reckless carelessness, nor caring what the results of his carelessness may be."

(3) Proof of the value of any animal, and of the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for loss or injury.

99. When any rate is raised or lowered or special terms of any kind are allowed to any person or to any species of traffic an intimation thereof shall forthwith be published in the *Gazette*.

Publication of rates in the *Gazette*.
512, 1891, s. 5.
Cf. U.K.
51 & 52 Vict.
c. 25, Part II.

100. Nothing in this or any Special Act shall render the Commissioner liable to a greater extent than a common carrier, or liable in any case in which, according to the laws of the State, a common carrier would not be liable, nor deprive the Commissioner of any protection or privilege which common carriers are entitled to ; but the Commissioner shall be entitled to every such protection and privilege : Provided that nothing in this section shall affect the operation of—

Commissioner not to be liable to a greater extent than common carriers.
7, 1847, s. 84.
U.K. 8 & 9
Vict. c. 20,
s. 89.

(a) the Carriers Act, 1891 ;

(b) any by-law of the Commissioner prescribing conditions on which goods are carried.

Motor services.

101. In addition to any other powers conferred upon the Commissioner, the Commissioner may purchase, construct, or otherwise acquire any motor or other vehicles, and, subject to the Road and Railway Transport Acts, 1930 and 1931, may use and maintain them for the purpose of conveying passengers and goods on roads and streets in the State.

Power to use motor vehicles.
1773, 1926, s. 3.

Refreshment rooms.

102. Notwithstanding anything contained in the Licensing Act, 1932, the Commissioner, instead of leasing as refreshment rooms premises at a railway station vested in him as Commissioner, may himself carry on in those premises the business of a keeper of railway refreshment rooms.

Railways Commissioner may supply liquor at railway refreshment rooms without a licence.
1644, 1924,
s. 24 (part),

103. The Early Closing Acts, 1911 to 1924, shall not apply in respect of any railway refreshment rooms which are under the direct control and management of the Commissioner, nor in respect of any dining saloon or buffet on any passenger or mixed train or passenger railway motor car under the control of the Commissioner.

Early Closing Acts not to apply to certain railway refreshment rooms.
1644, 1924, s. 4.

104. (1) The Commissioner at any refreshment room carried on by him at any railway station outside a radius of ten miles from the General Post Office at Adelaide, and the

Sale of liquor at refreshment rooms and on trains.
2241, 1935,
s. 19.

lessee of any such refreshment room holding a railway licence under Part V. of the Licensing Act, 1932, may sell or supply any liquor as defined by section 4 of the Licensing Act, 1932—

- (a) to any person from the time of arrival at that station of any passenger or mixed train or rail motor car which is in the course of making a journey, until the departure of that train or rail motor car, or any other train or rail motor car continuing the journey in place of that train or rail motor car, but not during any day or time when the sale of liquor is prohibited by law :
- (b) to any *bona fide* passenger on any such train at any time.

(2) Any person who purchases or obtains or attempts to purchase or obtain liquor from a railway refreshment room by falsely representing that he is a *bona fide* passenger shall be guilty of an offence, and shall be liable for a first offence to a penalty not exceeding five pounds, and for every subsequent offence to a penalty not exceeding twenty pounds.

(3) The Commissioner may, in any dining car or buffet car on a train which is in the course of making a journey, sell or supply any liquor to any passenger on that train, but only for consumption on that train.

(4) The Commissioner may sell or supply liquor as permitted by this section without obtaining any licence or permit.

105. (1) The Commissioner may at the railway refreshment rooms at the Adelaide Railway Station, and without obtaining any licence or permit, sell or supply dry wines and cider as defined in this section to any person between the hours of eight o'clock in the morning and eight o'clock in the evening on any day except Sunday if that person is taking a *bona fide* meal or refreshments at those refreshment rooms and consumes the wine or cider whilst taking that meal or those refreshments

(2) In this section "dry wines and cider" means dry wines and cider manufactured in the Commonwealth of Australia, containing in the case of wine not more than twenty-five per centum of proof spirit, and, in the case of cider, not more than twelve per centum of proof spirit.

Accidents.

106. Where in or about any of the railways, or any of the works or buildings connected with any of the railways, or any building or place, whether open or enclosed, used in working any of the railways, any of the following accidents take place in the course of working any of the railways, that is to say :—

Commissioner to report accident to Minister.
414, 1887, s. 64.
U.K. 34 & 35
Vict. c. 78,
s. 6;
63 & 64 Vict.
c. 27, s. 13;
23 & 24
Geo. 5 c. 53,
s. 43.

- (a) Any accident attended with loss of life, or personal injury to any person whomsoever :
- (b) Any collision where one of the trains is a passenger train :
- (c) Any passenger train, or any part of a passenger train, accidentally leaving the rails :
- (d) Any accident of a kind not comprised in the foregoing descriptions, but which is of such a kind as to have caused or to be likely to cause loss of life or personal injury,

the Commissioner shall forward the earliest information to the Minister, and as soon as practicable thereafter full information of the accident, and the report of the officers appointed by the Commissioner to hold an inquiry into the matter.

107. (1) Where it appears to the Minister, either before or after the commencement of any such inquiry, that a more formal investigation of the accident, and of its causes, and of the circumstances attending it, is expedient, the Governor may by order direct such an investigation to be held.

Inquiry into accident.
414, 1887, s. 65.
U.K. 34 & 35
Vict. c. 78,
s. 7.

(2) With respect to every such investigation the following provisions shall have effect :—

- (a) The Governor may by the same or any subsequent order direct a special magistrate or other person or persons to hold the investigation with the assistance of assessors named in the order :
- (b) The persons holding any such formal investigation (hereinafter referred to as the court) shall hold it in open court in such manner and under such conditions as they think most effectual for ascertaining the causes and circumstances of the accident and enabling them to make the report mentioned in this section :
- (c) The court shall have for the purpose of the investigation all the powers of a court of summary jurisdiction

when acting as a court in the exercise of its ordinary jurisdiction, and in addition the following powers, namely :—

- (i.) They may enter and inspect any place or building the entry and inspection whereof appears to them requisite for the purpose of the investigation :
 - (ii.) They may, by summons under their hands, require the attendance of all such persons as they think fit to call before them and examine for that purpose, and may for that purpose require answers or returns to any inquiries which they think fit to make :
 - (iii.) They may require and enforce the production of all books, papers, and documents which they consider important for the purpose of the investigation :
 - (iv.) They may administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by him on his examination :
 - (v.) Every person so summoned, not being a person engaged in the railway service or otherwise connected with it shall be allowed such expenses as would be allowed to a witness attending on subpoena before the Supreme Court ; and any dispute as to the amount to be allowed, shall be referred by the court to the Master of the Supreme Court, who on request under the hands of the members of the court shall ascertain and certify the proper amount of such expenses :
- (d) The court holding an investigation of any accident shall make a report to the Governor stating the causes of the accident and all the circumstances attending it, and any observations thereon or on the evidence or on any matters arising out of the investigation which they think right to make to the Governor who may cause every such report to be made public in such manner as he thinks expedient.

108. (1) The Governor may empower the Commissioner if any accident or slip happens or is apprehended to any cutting, embankment, or other work belonging to the Commissioner, to enter upon any lands adjoining any railway for the purpose of repairing or preventing that accident, and to execute any works necessary for the purpose: Provided that in case of necessity, the Commissioner may enter upon such lands, and do any such works without the previous sanction of the Governor.

Power for Commissioner to enter upon adjoining lands to repair accidents.
7, 1847, s. 152.
Ct. U.K.
5 & 6 Vict.
c. 55, s. 14.

(2) The Commissioner shall, within forty-eight hours after such entry, make a report to the Governor, specifying the nature of the accident or apprehended accident, and of the works necessary to be done; and the powers exercisable under subsection (1) shall cease and determine if the Governor, after considering the report, certifies that their exercise is not necessary for the public safety.

(3) The works executed under this section shall be as little injurious to the adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible dispatch.

Damages.

109. (1) Every person injured in his person or property by the wrongful act, neglect, or default of the Commissioner, or of any person employed by him or by his authority, express or implied, upon any railway, or upon or in connection with any other undertaking of the Government having for its object the carriage of passengers or goods for reward, shall have a similar right of action against the Commissioner for the recovery of damages sustained by reason of that wrongful act, neglect, or default, to that which that person would have against a private company if that railway or other undertaking were carried on by a private company, any law or usage to the contrary notwithstanding.

Damages for injuries caused on railways.
17, 1874, s. 1.

(2) No defence to any such action against the Commissioner shall be available which could not be maintained by a private company.

110. The Commissioner shall also be liable to actions brought under Part II. of the Wrongs Act, 1936, and such actions may be brought by the class of persons authorised by that Act to bring such actions in respect of deaths caused by accidents upon any railway, or upon any other undertaking mentioned in the last preceding section.

Commissioner to be liable for accidents causing death.
17, 1874, s. 2.

PART V.

Defendant may
pay money
into Court.
17, 1874, s. 4.

111. In any action brought pursuant to the last preceding section, it shall be a sufficient payment into court if the defendant pays money into court as a compensation in one sum to all persons entitled under Part II. of the Wrongs Act, 1936, for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the court, and if that sum is not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the court thinks that sum sufficient, the defendant shall be entitled to the verdict upon that issue.

Costs and
satisfaction of
judgments.
17, 1874,
ss. 5, 6.

112. In any action against the Commissioner, costs may be awarded as in actions between private persons and the Governor may satisfy any judgment recovered against the Commissioner out of the general revenue of the State and carry out any order of the court without any warrant other than this Act.

Limit of
damages
recoverable.
414, 1887, s. 66.

113. Notwithstanding anything contained in the last preceding four sections, no person, nor the representatives or relatives of any deceased person, shall be entitled to recover from the Commissioner, by reason of any injury sustained by any such person whilst being carried on any railway vested in the Commissioner, or whilst being in, upon, or about any station, yard, land, or premises vested in the Commissioner, as a passenger travelling upon any such railway or as an employee on any such railway, whether that injury arose from negligence or otherwise, any sum in excess of one thousand pounds, except under an insurance ticket issued by the Commissioner as hereinafter provided.

Issue of
insurance
tickets.
414, 1887, ss.
67, 68.

114. (1) Tickets providing for compensation in case of injury by accident sustained by any person as mentioned in the last preceding section, shall be issued at all railway stations where railway tickets are issued, on all railways vested in the Commissioner.

(2) Such tickets shall be issued by the Commissioner, or by some assurance office to be approved by the Commissioner, and the amount of the compensation payable by the Commissioner, in respect of injury sustained by any individual, and whether under one or more than one insurance ticket, shall in no case exceed five thousand pounds.

Offences.

Offences
relating to
tickets.

912, 1906, s. 3.
1144, 1913, s. 9.

115. Any person who—

(1) alters a railway ticket—

(a) with intent to avoid payment of the proper fare or of any part thereof ; or

- (b) with intent to mislead or deceive ; or
 - (c) for the purposes of sale or exchange :
- (2) sells, transfers, or exchanges, or offers for sale, transfer, or exchange, a free railway pass :
 - (3) being the person to whom a free railway pass has been issued, permits any other person to be in possession or to make use thereof :
 - (4) travels or attempts to travel with or by means of a free railway pass issued to another person :
 - (5) sells, transfers, or exchanges, or offers for sale, transfer, or exchange—
 - (a) a railway ticket which has been used for the whole or any part of the journey for which it was issued :
 - (b) a portion of a railway ticket, which portion has been used for the whole or any part of the journey for which that portion was issued :
 - (c) a portion of a railway ticket, whether issued in the State or elsewhere, of which any other portion has been used :
 - (6) not being authorised or employed by the Commissioner for the purpose, sells or offers for sale, or exchanges or offers for exchange, any railway ticket, whether issued in the State or elsewhere, or any portion of such a ticket :
 - (7) purchases or offers to purchase a railway ticket, whether issued in the State or elsewhere, or any portion of such a ticket, from any person not employed by the Commissioner to sell it :
 - (8) uses on any portion of any railway in the State a ticket, or any portion of a ticket, which has been theretofore sold in any other State by some person other than the Railways Commissioner or Commissioners of that State, or his or their authorised servants or agents :
 - (9) being the person to whom a railway season ticket has been issued, permits any other person to be in possession of or to use that ticket, unless it has been transferred to that other person in accordance with the by-laws :

- (10) travels or attempts to travel with or by means of a railway season ticket issued to any other person, unless that ticket has been transferred to him in accordance with the by-laws,

shall be guilty of an offence, and liable to a fine of not less than one pound nor more than fifty pounds, or to imprisonment for any period not exceeding six months.

Travelling
without pay-
ment of fare,
etc.

912, 1906, s. 4.
Cf. U.K.
52 & 53 Vict.
c. 57, s. 5
(part).

116. Any person who, with or without intent to defraud—

- (1) uses or attempts to use a railway ticket or free pass the time for the proper use of which has expired, or which has already been used to the full extent to which the holder is entitled to use it ; or
- (2) not being the holder of a free railway pass for the purpose, travels or attempts to travel on the railway without having previously paid the proper fare ; or
- (3) having paid his fare for a certain distance, or being the holder of a free pass for a certain distance, proceeds beyond that distance without having previously paid the additional fare or the fare, as the case may be, for the additional distance, or refuses on demand to pay the additional fare or as the case may be, the fare for the additional distance ; or
- (4) without the written consent of a railway official travels by a superior class of carriage to that for which his ticket or pass is available without previously paying the difference in fare ; or
- (5) refuses or neglects to quit the railway carriage at the point to which his ticket or pass is available,

shall be guilty of an offence, and liable to a fine not exceeding ten pounds in addition to the amount due as fare or difference in fare.

Obtaining
concession
tickets by
untrue
statement.
912, 1906, s. 5.

117. Any person who by means of an untrue statement, certificate, or declaration obtains a ticket at a reduced rate shall be guilty of an offence, and liable to a fine of not less than five pounds nor more than fifty pounds, or to imprisonment for any period not exceeding six months.

118. Any person who, having obtained a ticket at a reduced rate, transfers it to any other person shall be guilty of an offence, and liable to a fine of not less than five pounds nor more than fifty pounds.

Transferring tickets.
912, 1906, s. 6.

119. Any person who uses a ticket, knowing it to have been issued at a reduced rate to some other person, shall be liable to a fine of not less than five pounds nor more than fifty pounds.

Use by another person.
912, 1906, s. 7.

120. In the five preceding sections the term "free railway pass" or "free pass" includes any token, or privilege pass, or requisition form for any such pass respectively, and the term "ticket" includes season ticket.

Definition of "free pass."
912, 1906, s. 8.
1144, 1913,
s. 10.

121. (1) Any person, while upon any railway vehicle or railway premises or upon quitting any railway vehicle or railway premises, shall, upon request by any station master, guard, conductor, ticket examiner, porter, or other railway official, give to that station master, guard, conductor, ticket examiner, porter, or other railway official, his full name and address.

Persons using railway to give name and address on demand.
1486, 1921,
s. 15.

(2) If any such person, upon being so requested—

- (a) refuses or fails to give his full name or address ; or
- (b) gives a false name or a false address,

he shall be guilty of an offence and liable to a fine not exceeding ten pounds.

122. (1) No person shall—

- (a) while travelling in any tramcar, belonging to the Commissioner, or after having travelled in any such tramcar, avoid or attempt to avoid payment of his fare ; or
- (b) having paid his fare for a certain distance, proceed in any such tramcar beyond that distance, and neglect to pay the additional fare for the additional distance, or attempt to avoid payment of that additional fare ; or
- (c) refuse or neglect, on arriving at the point to which he has paid his fare, to quit the tramcar ; or
- (d) deface any notice on any part of any such tramcar ; or

Offences relating to tramcar fares.
1486, 1921,
s. 16.
1773, 1926, s.4.

- (e) obstruct any person employed on any such tramcar in the performance of his duty ; or
- (f) behave in a violent or offensive manner to the annoyance of others on any such tramcar ; or
- (g) refuse to leave the platform or steps of any such tramcar when required to do so by the conductor or driver ; or
- (h) while travelling upon any such tramcar, or upon quitting any such tramcar, refuse or neglect, when thereunto requested by the conductor or driver, to give to the conductor or driver his full name or address, or give a false name or a false address.

(2) Any person who is guilty of any contravention of this section shall be guilty of an offence and liable to a fine not exceeding ten pounds.

(3) In this section " tramcar " includes any vehicle of the Commissioner used for the purpose of conveying passengers on any road or street in the State.

Obstructing
officers or
trespassing
upon railway.

7, 1847, s. 157.
Cf. U.K.
31 & 32 Vict.
c. 119, s. 23;
34 & 35 Vict.
c. 78. s. 11.

123. (1) If any person wilfully obstructs or impedes any officer or agent of the Commissioner in the execution of his duty upon any railway, or upon or in any of the stations or other works or premises connected therewith, he shall be guilty of an offence and liable to a fine not exceeding five pounds.

(2) Any officer or agent of the Commissioner may arrest any person offending against this section, without any warrant other than this Act, and may take the person arrested before a justice to be dealt with according to law.

PART VI.

PART VI.

INTERSTATE RAILWAYS.

Interpretation.
1979, 1930, s. 4

124. In this Part, except where some other meaning is clearly intended—

“ the Agreement ” means the Agreement set out in the Second Schedule to this Act :

“ the connecting railways ” means—

- (a) the railway on the five feet three inches gauge from Puralka (previously called Mumbannar), in Victoria, to Mount Gambier, in South Australia, connecting with the railway constructed from Heywood in Victoria to Puralka and with the railway from Wolseley in South Australia to Mount Gambier ; and
- (b) the railway on the said gauge, from Pinnaroo in South Australia to Murrayville in Victoria, connecting with the railway from Tailem Bend in South Australia to Pinnaroo, and with the railway from Ouyen in Victoria to Murrayville.

125. The Agreement is hereby approved and ratified and shall be deemed and taken to be part of this Act, and all such things as may be necessary for carrying out the provisions thereof, so far as such provisions are to be carried out by this State, may and shall be done or suffered by the Commissioner.

Ratification of Agreement.
1979, 1930, s. 5.

126. The conduct of The Victorian Railways Commissioners in operating the train services on the parts within this State of the connecting railways from the said thirtieth day of June, one thousand nine hundred and thirty, down to the date of the coming into force of the South Australian and Victorian Border Railways Agreement Act, 1930, is hereby ratified and confirmed, and for all purposes shall be deemed to be authorised by this Act.

Validation of certain operations.
1979, 1930, s. 5.

127. The Commissioner shall at all times maintain, and keep open for traffic, such parts of the connecting railways as are situated within this State.

Connecting railways in South Australia to be maintained by this State.

1979, 1930, s. 6.

128. During the period while the Agreement is in operation The Victorian Railways Commissioners—

Victorian authorities empowered to work the parts of the said railways within this State.

1979, 1930, s. 7

- (a) may operate the train services on such parts of the connecting railways as are situated within this State ;
- (b) may collect and enforce the payment of rates for services rendered on or in connection with the said parts of the connecting railways ; and
- (c) for the purposes aforesaid, shall have, exercise, and enjoy all the powers, authorities, privileges, and immunities, and shall perform and be subject to the duties and obligations (subject, however, in

every case to the same conditions) of this State, and of the Commissioner under the laws for the time being in force in this State.

Laws, by-laws,
to be in
force.
1979, 1930, s. 8.

129. (1) During the period while the Agreement is in operation, all laws, by-laws, and regulations for the time being in force on or in respect of the other railways vested in the Commissioner shall be in force on and in respect of those parts of the connecting railways which are situated within the State, and may be enforced in all courts and tribunals of the State.

(2) Penalties imposed by those laws, by-laws, and regulations, may be recovered summarily.

(3) Such penalties may be recovered by any person appointed in that behalf by The Victorian Railways Commissioners and approved by the Commissioner. The production of a document, purporting to be signed by the said Commissioners and by the Commissioner, appointing and approving a person therein named to recover such penalties, shall be sufficient evidence that the person therein named has been duly appointed and approved as aforesaid, and shall be evidence that the person producing such document is the person thereby appointed and approved.

Tolls,
charges, &c.
1979, 1930,
ss. 9, 10.

130. (1) The Commissioner or, while they are working such parts of the connecting railways as are situated within this State, The Victorian Railways Commissioners, may demand for the use of those parts of the connecting railways, and for the carriage of goods, stock, minerals, mails, parcels, and passengers thereon, and for loading and unloading goods, minerals, mails, and stock such freights, tolls, fares, charges, and rates as are from time to time fixed by the Commissioner in manner prescribed by any Act or Acts under which he may fix freights, tolls, charges, rates, and fares in respect of the other railways under his control.

(2) Subject to the provisions of the Agreement, all fares, freights, tolls, rents, dues, charges, rates, and sums of money which are received and levied under the authority of this Act shall be paid, in such manner as the Governor prescribes, to the Treasurer of this State for the public purposes of this State.

131. The Commissioner, with the consent of The Victorian Railways Commissioners—

The South Australian Railways Commissioner may run trains between the Victorian border and Serviceton, in Victoria.
1979, 1930, s. 11.

- (a) may operate the train services on the railway (known in Victoria as the Dimboola and South Australian Border Railway) situated in Victoria between the South Australian and Victorian border and Serviceton ; and
- (b) for the purpose aforesaid shall have, exercise, and enjoy all the powers, authorities, privileges, and immunities, and shall perform and be subject to the duties and obligations (subject, however, in every case to the same conditions) of the State of Victoria and of The Victorian Railways Commissioners under the laws for the time being in force in the State of Victoria.

PART VII.

PART VII.

REGULATIONS AND BY-LAWS.

Regulations.

132. (1) The Commissioner shall make, and may alter and repeal, regulations for all or any of the following purposes :—

Regulations.
414, 1887,
ss. 29, 30.
786, 1902, s. 3.
829, 1903,
s. 2.

- (a) Prescribing the qualifications required in all candidates for permanent employment in the railway service, and the subjects for examination of all candidates for employment in each branch of that service :
- (b) Determining the branches of the railway service :
- (c) Determining the number and relative rank of the classes in the various branches, and the maximum and minimum salaries payable to the officers of each class, and the annual increase of those salaries :
- (d) Determining the wages to be paid to the officers and employees temporarily employed in the railway service :
- (e) Regulating the duties to be performed by employees in the railway service, and the discipline to be observed in the performance of those duties, the granting of leave of absence, other than long

service leave, from time to time, and arranging for the performance of duties during holidays, and for affixing to breaches of those regulations, according to the nature of the offences, such penalties as are authorised by this Act :

- (f) Fixing the ages at which employees shall retire in the branches of the railway service :
- (g) Altering or repealing any rules or regulations made by the Commissioner, or the Governor, with regard to railways or officers and employees in the railway service :
- (h) Regulating the purchase, care, custody, and issue of stores and materials, and the taking and keeping of the accounts relating thereto :
- (i) Regulating the speed at which any train or engine shall travel upon any railway, or part of a railway, and prescribing penalties for breach of any such regulation.

(2) This section shall not interfere with or limit the power of any municipal council to regulate the speed of trains running along any street within its boundaries.

(3) The Commissioner may make all such other regulations not inconsistent with this Act, either applicable generally, or to meet particular cases, as are necessary or desirable to carry out the objects and purposes of this Act, or as are convenient for the administration thereof.

By-laws.

By-laws.

414, 1887, s. 37.
1144, 1913, s. 4.
Cf. U.K.
8 & 9 Vict.
c. 20, s. 108.

133. The Commissioner may make, alter, and repeal by-laws for all or any of the following purposes, and may prescribe penalties not exceeding ten pounds for a breach of any of such by-laws :—

- (a) Fixing the amount of fares for the conveyance of passengers and the charges for the carriage of animals, goods, and parcels, and the circumstances and conditions under which the Commissioner will make special rates for the carriage of goods :

s. 133. SMITH v. COMLEY, 22nd May, 1894. *Seemle*, a power to make by-laws governing the regulation of traffic, or the use of the railways, does not authorise a by-law prohibiting a person not travelling on the railway from selling the return half of a ticket without the consent of the Commissioner.

- (b) Preventing the smoking of tobacco or the commission of any nuisance in or upon any carriage or in any station, building, pier, wharf, or jetty vested in the Commissioner :
- (c) Preventing the emptying of sewage or drainage on to any railway, land, station, building, pier, wharf, or jetty vested in the Commissioner :
- (d) Regulating the exercise of the powers vested in any piermaster :
- (e) Regulating the admission of vessels to, and the removal of vessels, from, any pier, wharf, or jetty vested in the Commissioner, and for the good order and government of such vessels whilst at such pier, wharf, or jetty :
- (f) Regulating the use of any such pier, wharf, or jetty :
- (g) Regulating the shipping and unshipping, landing, warehousing, stowing, depositing, and removing of all goods from or at any such station, building, pier, wharf, or jetty :
- (h) Regulating the conduct of all persons (not being the harbourmaster of the Harbors Board, or any officer of Customs) while upon or in any such station, building, pier, wharf, or jetty, or while employed at or near the same :
- (i) Regulating the use of fires and lights within any vessel being at any such pier, wharf, or jetty, except within the jurisdiction of the Harbors Board :
- (j) Preventing damage or injury to any vessel or goods at any such station, building, pier, wharf, or jetty :
- (k) Regulating the duties and conduct of porters, cabmen, carmen, draymen, and carriers (not being employees of the Commissioner) employed at any such station, building, pier, wharf, or jetty, and fixing the charges to be paid to them for carrying any passengers, goods, articles, or things from or to the same :
- (l) Fixing the amount of tolls to be paid by any vessel using any such pier, wharf, or jetty, or any crane, the property of the Commissioner, and for fixing the amount of tolls to be paid on goods brought to or taken from any vessel using any such pier, wharf, or jetty, by lighter or other vessel :

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- (m) Fixing the amount of tolls upon animals and goods received or delivered upon or from any such pier, wharf, or jetty :
 - (n) Regulating generally the travelling and traffic upon and the using and working of the railways, and of the stations, buildings, piers, wharfs, and jetties hereinbefore mentioned, and for the good government and maintenance of order thereon :
 - (o) Regulating the terms and conditions upon which special trains will be run :
 - (p) Regulating the admission of the public to any of the railways and to any of the stations, buildings, piers, wharfs, or jetties hereinbefore mentioned, and for fixing a charge therefor, or for dispensing with the charge on certain days or for certain times :
 - (q) Regulating the use of stamps as prepayment upon parcels :
 - (r) Regulating the sale of tickets at places other than railway stations, and the conditions under which such tickets shall be sold :
 - (s) Fixing demurrage charges where goods are to be loaded into or discharged from trucks by owners, consignors, or consignees :
 - (t) Fixing the charges for warehousing goods and the charges to be paid in respect of parcels and luggage left for transit or for care or custody, and the conditions upon which they respectively will be received :
 - (u) Regulating the disposal of unclaimed goods :
 - (v) Imposing conditions upon which passengers' luggage will be carried :
 - (w) Preventing or regulating bathing or fishing in or shooting over or upon any reservoir or tank connected with any of the railways :
 - (x) Regulating the carriage of corpses, and prohibiting the carriage or conveyance of the bodies of persons who have died from contagious diseases :
 - (y) Prohibiting the carriage or conveyance of diseased animals, and preventing them from coming upon any station or premises :

- (z) Preventing damage or injury to railway stations, buildings, piers, wharfs, or jetties or premises, carriages, gates, fences, or any property whatever :
- (aa) The issue and prevention of the abuse of free passes on the railways :
- (bb) Regulating public or private traffic across any of the railways on the level thereof, and for preventing animals trespassing on any of the railways :
- (cc) Regulating the manner in which public notices shall be advertised, and generally with regard to advertising in newspapers and elsewhere :
- (dd) Facilitating and regulating the insurance by any accident insurance company of persons travelling on the lines of railway :
- (ee) Repealing or altering any by-laws made by the Commissioner under any Special Act.

And generally for carrying out the powers vested in the Commissioner by this Act or for more conveniently administering this Act: Provided that such by-laws shall not be repugnant to the laws of the State, or to the provisions of any special Act.

134. No by-law or regulation which the Commissioner is by this Act authorised to make shall have any force or effect until it has been confirmed by the Governor and published in the *Gazette*: Provided that—

Procedure as to
by-laws and
regulations.
414, 1887,
ss. 31, 33.
512, 1891, s. 6.
Cf. U.K.
3 & 4 Vict.
c. 97, ss. 7, 8,
9.

- (a) every such by-law and regulation shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then sitting, and if Parliament is not sitting, then within fourteen days after the commencement of the next session of Parliament; and
- (b) if an address is presented to the Governor by either House within the next subsequent thirty days praying that any such by-law or regulation, or any part thereof, be annulled, the Governor may thereupon annul it; and
- (c) any by-law or regulation, or portion of a by-law or regulation, so annulled shall thereupon become void and of no effect, but without prejudice to the

validity of any proceedings which have been taken in the meantime under that by-law or regulation, or part of a by-law or regulation.

Validation of
existing
by-laws.
912, 1906, s. 10
1486, 1921,
s. 14.

135. (1) The following by-laws, namely—

- (a) the by-laws made by the Commissioner on the second day of August, nineteen hundred and six and published in the *Gazette* on the sixteenth day of August, nineteen hundred and six; and
- (b) the by-laws made by the Commissioner on the tenth day of June, nineteen hundred and twenty, and published in the *Gazette* on the twenty-fourth day of June, nineteen hundred and twenty,

shall, whether within or in excess of the Commissioner's powers in that behalf, be and continue in full force and effect until altered or repealed by subsequent by-laws made by the Commissioner, and shall be deemed to be enacted by this Act, and the validity thereof shall not be questioned in any court of law in any manner howsoever.

(2) The following rules, regulations, and by-laws, namely—

- (a) the regulations made by the Governor in accordance with section 36 of the Civil Service Act, 1874; and
- (b) the rules, regulations, and by-laws made or purporting to have been made by the Commissioner of Railways before the passing of the South Australian Railways Commissioners Act, 1887 (whether within or in excess of the powers conferred on the Commissioner of Railways)

shall to the extent to which they have not been altered or repealed by regulation or by-laws made by the Commissioner under this Act or the Acts repealed by this Act be deemed to have been enacted by this Act and shall continue to be of full force and effect until altered or repealed by regulations or by-laws made under this Act.

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PART VIII.

PART VIII.

MISCELLANEOUS.

136. If any person without reasonable excuse (proof whereof shall lie on him)—

(a) having been summoned and having had the expenses (if any) to which he is entitled tendered to him, fails to attend as a witness before a court holding an investigation under this Act, or fails when required by any such court in pursuance of this Act so to do, to make any answer or to give any return or to produce any document or to make or sign any declaration ; or

(b) prevents or impedes any such court in the execution of its duty,

he shall be guilty of an offence, and liable to a fine not exceeding ten pounds, and in the case of a failure to make any return or produce any document, a fine not exceeding ten pounds for every day during which that failure continues.

(2) Where the offence consists of preventing or impeding the court, any member of the court or any person called by him to his assistance, may seize and detain the offender until he can be conveniently taken before a court of summary jurisdiction, to be dealt with according to law.

137. (1) Every action to be brought against the Commissioner or against any person for anything done or purporting to have been done under this Act or any Act repealed by this Act, shall be commenced within six months after the act complained of was committed, or the damage was sustained.

(2) No writ shall be sued out against, and no copy of any process served upon the Commissioner or any other person for anything done or purporting to have been done by him under this Act or any Act repealed by this Act, unless notice in writing of that intended writ or process has been delivered to the Commissioner, or left at the office of the secretary, or at the usual place of abode of that other person, by the agent or attorney of the person who intends to cause the writ or process to be sued out or served, at least one month before it is sued out or served.

(3) The notice shall clearly and explicitly set forth the nature of the intended action and cause thereof, and on the notice shall be endorsed the name and place of abode of the person intending to bring the action, and the name and place of business of his attorney or agent.

Disobedience of person summoned as witness.

414, 1887, s. 69.

Actions against Commissioner or officers.

414, 1887, s. 78.

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

(5) No plaintiff shall recover in any such action if tender of sufficient amends was made before the action was brought, or if a sufficient sum of money was paid into court by or on behalf of the defendant after the commencement of the action.

(6) If the matter or thing complained of appears to have been done under the authority and in the execution of this Act or any Act repealed by this Act, or if the action is brought after the time prescribed by this section for bringing it, or notice has not been given as prescribed by this section, then judgment shall be given for the defendant or a nonsuit may be entered.

Executions
not to issue
for fourteen
days.
414, 1887, s. 79.

138. No writ of execution shall be issued against the Commissioner, except in respect of goods and chattels vested in him under this Act, nor until fourteen days after final judgment has been completely signed; and no railway and no real estate vested in the Commissioner shall be liable to be sold under any writ of execution or other process of any court.

Prosecutions
and recovery
of penalties
and damages.
414, 1887, s. 80.
7, 1847.
s. CLXXXV.
U.K. 8 & 9
Vict. c. 20,
s. 145.

139. (1) Proceedings for offences against this Act, or for recovery of any penalty, fine, or forfeiture under this Act shall be disposed of summarily.

(2) If through any act, neglect or default, on account of which any person has incurred any penalty prescribed by this or the special Act, any damage to the property of the Commissioner has been done by that person, he shall be liable to make good that damage as well as to pay the penalty; and the amount of the damage shall, in case of dispute, be determined by the court by which the person incurring the penalty is convicted.

Persons liable
for penalties.
414, 1887, s. 81.

140. Every fine or penalty prescribed by this Act, or by any Act repealed by this Act, or by any by-law made under this Act, or under any Act repealed by this Act, may if the person actually committing a breach of any such Act or the by-law is not an officer or employee of the Commissioner, be enforced either against the person actually committing that breach or the person in whose employment he was, or on whose behalf he was acting, at the time of that breach.

Documents
signed by the
proper officer
of the
Commissioner
to be *prima
facie*
evidence.
414, 1887, s. 82

141. Every notice, requisition, order, regulation, appointment, certificate, certified copy, and other document in writing, signed by the secretary to the Commissioner, or some other officer nominated for that purpose by the Commissioner,

and every certified copy of entries in the Record Book, signed by that secretary or officer, shall be deemed sufficient evidence thereof, and in the absence of evidence to the contrary, without proof of the authority of the person signing it or of the signature thereto.

142. The production of the *Gazette* containing any by-law or regulation made under or validated by this Act, or any Act repealed by this Act, or a printed copy, or written copy purporting to be signed by the secretary to the Commissioner, or some other officer nominated for that purpose by the Commissioner, of any such by-law or regulation, shall be *prima facie* evidence that that by-law or regulation has been made, and that it is still in force.

Proof of
by-laws.
414, 1887, s. 83.

143. In all legal proceedings the production of a document purporting to be signed by the Commissioner of Railways, and to be a correct copy of any by-law made by him shall be *prima facie* evidence that such by-law has been duly and properly made, and that such by-law is valid and binding for all intents and purposes.

Production of
by-laws.
32, 1876, s. 17.

144. (1) The allegation in any complaint or information laid in relation to any alleged offence against this Act—

Facilitation of
proof of
offences.
1486, 1921,
s. 17.

- (a) that any property, real or personal, specified in the complaint or information belonged to or was the property of the Commissioner; or
- (b) that any person mentioned in such information was employed by or was in the service of the Commissioner, or was employed in the railway service of the State, or was employed by or was in the service of the Commissioner in a specified capacity, or was employed in the railway service of the State in a specified capacity,

shall be accepted by the court as proof of the truth of that allegation unless the contrary is proved.

(2) In any proceedings for an offence against this Act, of which offence the absence of authority, consent, or licence from the Commissioner, or from the Secretary of the Commissioner, or from any other person on behalf of the Commissioner or the said Secretary is a material element,

any such authority, consent, or licence may be proved by the defendant, but need not be specified or negatived in the information for such offence; but whether it is or is not specified or negatived in the information, no proof in relation to it shall be required on the part of the informant.

Proof of list
of officers.

414, 1887, s. 84.

145. The production of the *Gazette* containing the list of persons employed in the railway service, as required by section 36 of this Act, or any notices of appointments, retirements, removals, or dismissals, shall be conclusive evidence of the truth of the contents of that list, or of the fact of those appointments, retirements, removals, or dismissals.

Service of
notices.

7, 1847, s. 171.

Cl. U.K.

8 & 9 Vict.

c. 20, s. 138.

146. Any summons or notice, or any writ or other legal proceeding requiring to be served upon the Commissioner, may be served by being left at or transmitted through the post, directed to the principal office of the Commissioner, or by being given personally to the secretary to the Commissioner.

Copies of
plans, &c., to
be evidence.

7, 1847, s. X.

U.K. 8 & 9

Vict. c. 20,

s. 10.

147. (1) True copies of any plans mentioned in any Special Act or of any alteration or correction thereof, or extract therefrom, certified by the Surveyor-General, shall be received in all Courts of Justice or elsewhere as evidence of the contents of the originals.

(2) The Surveyor-General when required by any person interested, shall give him a certificate as mentioned in subsection (1) of this section.

SCHEDULES.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

No. and Year of Act.	Title of Act.	Extent of Repeal.
7 of 1847.....	The Railways Clauses Consolidation Act	Sections 1, 2, 3, 4, 16, 18, 19, 20, 21, 24, 41, 48, 50, 51, 53, 63, 69, 70, 81, 84, 89, 103, 104, 152, 157, 171
27 of 1855-6 ..	The South Australian Railway Act	The whole
6 of 1858	An Act to amend the Railways Clauses Consolidation Act, No. 7 of 1847	The whole
12 of 1858.....	An Act to subject certain Commissioners and Trusts therein named to the Control of the Commissioner of Public Works	The whole
11 of 1859.....	The Railway Commissioners Act	The whole
17 of 1874	An Act to provide for the Recovery of Damages caused by Negligence on the part of persons employed by the Government of South Australia in certain cases	The whole except section 3
32 of 1876	The Railways Clauses Act, 1876.....	The whole
126 of 1878 ...	An Act to authorise the Commissioner of Railways to take possession of portion of the Adelaide Park Lands, and for other purposes	The whole
202 of 1881 ...	Lands Clauses Consolidation Amendment Act, 1881.....	The whole (so far as not previously repealed)
414 of 1887 ...	The South Australian Railways Commissioners Act, 1887	The whole
512 of 1891 ...	The South Australian Railways Commissioners Act Amendment Act, 1891	The whole
612 of 1894 ...	The South Australian Railways Commissioners Act Amendment Act, 1894	The whole
786 of 1902 ...	The Railways Amendment Act, 1902	The whole
829 of 1903 ...	The Railways Service Appeal Board Act, 1903	The whole
840 of 1903 ...	An Act to give Railway Officers and Employés the option of subscribing to the Public Service Superannuation Fund in lieu of insuring their lives	The whole
912 of 1906 ...	The South Australian Railways Commissioners Further Amendment Act, 1906	The whole
988 of 1909 ...	The South Australian Railways Commissioners Act Amendment Act, 1909	The whole
1144 of 1913 ..	The South Australian Railways Commissioners Act Amendment Act, 1913	The whole
1332 of 1918 ..	South Australian Railways Commissioners Act Further Amendment Act, 1918	The whole
1392 of 1919 ..	Railways Clauses Act Amendment Act, 1919 ..	The whole
1486 of 1921 ..	South Australian Railways Commissioners Act Further Amendment Act, 1921	The whole
1644 of 1924 ..	Railway Refreshment Rooms Act, 1924	The whole
1773 of 1926 ..	South Australian Railways Commissioners Act Further Amendment Act, 1926	The whole
1838 of 1927 ..	South Australian Railways Commissioners Act Further Amendment Act, 1927	The whole
1933 of 1929 ..	South Australian Railways Commissioners Act Amendment Act, 1929	The whole
1979 of 1930 ..	South Australian and Victorian Border Railways Agreement Act, 1930	The whole
2185 of 1934 ..	South Australian Railways Commissioners Act, 1934.....	The whole
2241 of 1935 ..	Licensing Act, 1935	Sections 19 and 20

THE SECOND SCHEDULE.

AGREEMENT made the twenty-first day of September, one thousand nine hundred and thirty BETWEEN the STATE OF VICTORIA of the one part, and the STATE OF SOUTH AUSTRALIA of the other part WHEREBY IT IS MUTUALLY AGREED as follows :—

Interpretation.

1. (1) In this Agreement—

The singular number includes the plural and the plural number includes the singular ;

“ Conveyance of traffic ” includes conveyance, loading, and unloading, and all other services rendered in connection with traffic ;

“ Railways Commissioner ” means the Railways Commissioner or Commissioners, or other the person or authority who (according to the requirements of the context), under the laws for the time being of the particular State, carries out the construction, or the working of, or in whom are vested, the State railways of such State ;

“ Rate ” includes rate, fare, freight, toll, and any other charge for any services rendered on or in connection with a railway ;

“ State ” means the State of Victoria or the State of South Australia ;

“ Traffic ” includes passenger, goods, stock, mineral, parcel, mail, and all other traffic, and all other services rendered on or in connection with a railway ;

“ The Connecting railways ” means—

(a) the railway on the five feet three inches gauge from Puralka (previously called Mumbannar) in Victoria to Mount Gambier in South Australia, connecting with the railway constructed from Heywood in Victoria to Puralka and with the railway from Wolseley in South Australia to Mount Gambier ; and

(b) the railway on the said gauge, from Pinnaroo in South Australia to Murrayville in Victoria, connecting with the railway from Tailem Bend in South Australia to Pinnaroo, and with the railway from Ouyen in Victoria to Murrayville.

(2) In this Agreement, except where inconsistent with the context or some other meaning is clearly intended, the term “ railway ” includes—

(a) the railway referred to, and

(b) all works and conveniences connected with and used for the purposes of such railway, and

(c) all works and conveniences connected with and used for the purposes of such railway and any other railway or railways.

2. Each of the said States shall, at all times, at its own expense maintain such parts of the connecting railways as lie within its own territory in good repair and open for traffic.

3. Until this agreement is determined by notice as hereinafter provided—

(1) The ordinary train services on the connecting railways shall be such as are from time to time agreed upon between the Railways Commissioners of the said States.

(2) The said train services shall be operated by the Victorian Railways Commissioner.

(3) The cost incurred by the Victorian Railways Commissioner in operating the said train services shall be apportioned between the said States on the basis of the mileage run in the respective States.

(4) The Commissioners of the said States shall determine by agreement what expenditure shall be taken into account in reckoning the cost incurred by the Victorian Railways Commissioner in operating the said train services and failing agreement the expenditure so to be taken into account shall be decided by arbitration as provided in clause 8 of this agreement but in any event interest at the average rate debited to the Victorian Railways Commissioner by the Treasurer of Victoria on Victorian rolling-stock from time to time used for the purposes of the said train services shall be taken into account in reckoning the cost of operating the said services.

Each State to maintain railways within its own territory.

Train services on connecting railways.

- (5) The conditions upon and subject to which a special train may be run on either of the connecting railways and the mode of reckoning the working expenses of and the revenue derived from running any such train and of apportioning the said working expenses and revenue between the said States shall respectively be determined from time to time by agreement between the Railways Commissioners of the said State.

4. At all times, Victorian rates shall apply on the Victorian side of the boundary between the said States and South Australian rates on the South Australian side of the said boundary, but the Railways Commissioner of one State shall not at any time, in respect of the conveyance of any traffic from or to the starting point of either of the connecting railways or on, or on and from, or to and on, either of the said railways, allow any rebate, allowance, or consideration of any description, or charge any rate lower or higher than the mileage scale of rates then in general operation throughout such State, which may have the effect of—

Competitive rates not to be charged.

- (a) inducing traffic, either directly or indirectly, from the other State, or
(b) preventing or discouraging traffic, either directly or indirectly, from going into the other State.

Provided that—

- I. the Railways Commissioner of a State may continue to charge, in respect of the conveyance of traffic on any railway, any rates which were charged on the first day of September nineteen hundred and twenty-nine, in respect of the conveyance of similar traffic on such railway,
II. nothing in this agreement shall affect the agreement signed the twenty-fourth day of May nineteen hundred and five, and made between the Railways Commissioners of the States of New South Wales, Victoria, and South Australia, or prevent the Railways Commissioners of the States from making and giving effect to any other agreement of a similar nature, and
III. unless and until otherwise agreed between the Victorian and South Australian Railways Commissioners, the exemptions specified in subclauses (1), (2), and (3) of clause (b) of the said agreement signed the twenty-fourth day of May nineteen hundred and five shall apply in respect of traffic conveyed from or to the starting point of either of the connecting railways, or on, or on and from, or to and on either of the said railways.

5. The State of South Australia shall by legislation authorise the State of Victoria and its Railways Commissioner—

Necessary powers for working of the railways to be conferred by legislation.

- (a) during the period whilst this agreement is in force to operate the train services on such parts of the connecting railways as lie within the State of South Australia
(b) during the said period, to collect and enforce the payment of rates for services on such parts, and
(c) for those purposes to have exercise and enjoy all the powers authorities privileges and immunities and to perform and be subject to the duties and obligations (subject however in every case to the same conditions) of the State of South Australia and its Railways Commissioner under the laws for the time being in force in the State of South Australia.

6. (1) All revenue derived from the connecting railways shall be paid to the Commissioner for the State wherein the revenue was earned.

Allocation of revenue from connecting railways.

(2) For the purposes of this clause the revenue earned in each State shall be deemed to be that portion of the total revenue derived from the said railways which constitutes the consideration for the conveyance of traffic in that State.

7. This agreement may be determined by twelve calendar months' notice in writing given by the Premier of either State to the Premier of the other State.

Agreement may be determined.

8. (1) If any question or difference arises between the said States, or between the Railways Commissioners of the said States, touching this agreement, or the construction of this agreement, or the rights, duties, or obligations under this agreement of a State or the Railways Commissioner thereof, or as to any other matter in anywise arising out of or connected with or incidental to any of the subject matters of this agreement, the same shall be referred to a single arbitrator agreed upon by the Governors of the said States, or if the said Governors do not agree upon a single arbitrator within fourteen days after

Arbitration.

notice in writing given by one of them to the other of his desire so to agree, then to three arbitrators one to be appointed by the Governor of each of the said States, and the third to be appointed by writing signed by the two appointed as aforesaid before the reference is entered upon; and the decision of such single arbitrator (if only one) of such three arbitrators, or any two of them, shall be binding and final and not subject to any appeal or to be questioned in any manner whatsoever. If the Governor of a State fails to appoint an arbitrator within fourteen days after the Governor of the other State has appointed an arbitrator, and caused notice in writing to be given to the Governor of the first mentioned State requiring him to appoint an arbitrator, then upon such failure the Governor making the request may appoint another arbitrator to act on behalf of the State the Governor of which has so failed to appoint, and the arbitrator so appointed may proceed and act in all respects as if he had been appointed by the Governor so failing to make such appointment.

(2) This agreement shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1923 of the State of Victoria, and of the Arbitration Act 1891 of the State of South Australia, and each of those Acts shall, within its own State, apply to the arbitration and all matters incidental thereto or consequent thereon.

IN WITNESS whereof the Honourable Edmond John Hogan (Premier of the State of Victoria) for and on behalf of the State of Victoria, and the Honourable Lionel Laughton Hill (Premier of the State of South Australia) for and on behalf of the State of South Australia, have hereunto set their hands and seals the day and year first above written.

SIGNED SEALED AND DELIVERED by the abovenamed THE HONOURABLE EDMOND JOHN HOGAN in the presence of	}	H. A. PITT	E. J. HOGAN.
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SIGNED SEALED AND DELIVERED by the abovenamed THE HONOURABLE LIONEL LAUGHTON HILL in the presence of	}	H. BLINMAN	L. L. HILL.
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By-laws and Regulations.

The following by-laws and regulations were in force under this Act on the 23rd day of October, 1937:—

BY-LAWS—

1. *General By-laws Governing Passengers and Public*—

By-law A: *Gazette*—16th August, 1906, p. 355.

By-law D: *Gazette*—24th June, 1920, p. 1487.

2. *Unauthorised Crossings*—

By-law E: *Gazette*—5th March, 1931, p. 419.

(See Road Traffic Act, 1934-1936, sections 122, 156.)

3. *Removal of Goods from Railway Premises*—

By-law F: *Gazette*—7th January, 1932, p. 20.

4. *Tickets Covering Combined Services*—

By-law G: *Gazette*—12th July, 1934, p. 42.

By-laws and Regulations—continued.

BY-LAWS—continued.

5. *Rates and Conditions for the Carriage of Merchandise, Minerals, Livestock, &c.*—

By-law 226: *Gazette*—9th March, 1934, p. 541.

By-law 229 (Livestock): *Gazette*—25th April, 1935, p. 1198.

By-law 232 (Crude Oil, Kerosene, and Motor Spirit): *Gazette*—18th June, 1936, p. 1212.

By-law 234 (Barrier Traffic): *Gazette*—7th October, 1937, p. 917.

6. *Passenger Rates and Conditions*—

By-law 228: *Gazette*—4th January, 1935, p. 41.

By-law 233: *Gazette*—16th September, 1937, p. 704.

7. *Use of Railway Facilities for Loading and Unloading Merchandise other than Rail-borne Merchandise*—

By-law 230: *Gazette*—23rd January, 1936, p. 218.

REGULATIONS—

1. *Employment, Rules, Duties, &c., of Staff*—

Regulation No. 56: *Gazette*—2nd November, 1922, p. 990.

Regulation No. 86: *Gazette*—28th March, 1929, p. 652.

Regulation No. 88: *Gazette*—27th June, 1929, p. 1495.

Regulation No. 90: *Gazette*—23rd January, 1930, p. 139.

Regulation No. 105: *Gazette*—7th March, 1935, p. 688.

Regulation No. 108: *Gazette*—30th May, 1935, p. 1439.

2. *Locomotive Workshop Rules*—

Regulation No. 89: *Gazette*—21st November, 1929, p. 1125.

3. *Branches of Railway Service*—

Regulation No. 99: *Gazette*—14th January, 1932, p. 32.

By-laws and Regulations—continued.

REGULATIONS—*continued.*4. *Classification of Officers—*

Regulation No. 111: *Gazette*—24th September, 1936, p. 643.

Regulation No. 113: *Gazette*—14th October, 1937, p. 1032.

Regulation No. 114: *Gazette*—14th October, 1937, p. 1029.

Regulation No. 115: *Gazette*—14th October, 1937, p. 1030.

5. *Home Stations and Travelling Allowances—*

Regulation No. 65: *Gazette*—21st August, 1924, p. 469.

Regulation No. 67: *Gazette*—11th September, 1924, p. 658.

6. *Transfers—*

Regulation No. 66: *Gazette*—11th September, 1924, p. 658.

7. *Leave of Absence, Holidays, and Sick Leave—*

Regulation No. 68: *Gazette*—20th November, 1924, p. 1338.

Regulation No. 69: *Gazette*—23rd July, 1925, p. 182.

8. *Injuries, Sickness, and Medical Standards—*

Regulation No. 107: *Gazette*—18th April, 1935, p. 1142.

9. *Clothing and Equipment—*

Regulation No. 91: *Gazette*—28th August, 1930, p. 410.

10. *The Railways Institute—*

Regulation No. 79: *Gazette*—28th July, 1927, p. 218.

Regulation No. 84: *Gazette*—8th March, 1928, p. 509.

Regulation No. 101: *Gazette*—25th February, 1932, p. 381.

11. *The Railways Service Appeal Board—*

Gazette—11th February, 1904, p. 253.

The remuneration and terms of employment of railway professional officers and of some railway employees on daily wages are governed by awards of the Commonwealth Court of Conciliation and Arbitration; other employees are subject to determinations of industrial boards under the Industrial Code, 1920.