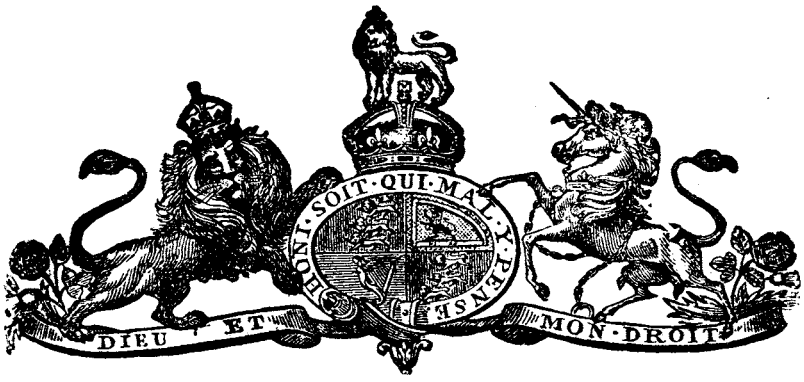
THE RAILWAY MANAGEMENT ACT, 1910.

ANALYSIS

TASMANIA.



1910.

ANNO PRIMO

GEORGII V. REGIS,

No. 69.

A.D. 1910.

AN ACT to amend "The Railway Management Act, 1891," and for other purposes.

[13 *January*, 1911.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I.

PRELIMINARY.

Division of Act.

1 This Act is divided into parts, as follow:—

Part I.—Preliminary.
Part II.—The Railway Commissioner.
Part III.—Appointment of Officers.
Part IV.—Regulations.

Short title and incorporation with 55 Vict. No. 40.

2 This Act may be cited as "The Railway Management Act, 1910," and shall be read and construed with, and as an amendment of, and shall be deemed to be incorporated with, "The Railway Management Act, 1891," hereinafter called the Principal Act, and every Act amending the same.

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Commencement.

3 This Act shall commence and take effect on a day to be appointed by proclamation.

Amendment of Section 5 of Principal Act.

4—(1.) The definition "General Manager" or "Manager" in Section Five of the Principal Act is hereby repealed, and the definition "Commissioner" set forth in Section Six of this Act is substituted therefor.

Repeal of Sections 7 and 8 of Principal Act.

(2.) Sections Seven and Eight of the Principal Act are hereby repealed.

Construction of Principal Act.

(3.) Wherever the words "General Manager of Railways" or "General Manager" or "Manager" occur in the Principal Act, or in any rules, regulations, by-laws, or scales of fares, rates, or charges made under the Principal Act, the same shall be respectively read and taken to mean the Commissioner appointed under this Act.

(4.) Whenever in any other Act (or in any regulations or by-laws thereunder) reference is made to the General Manager of Railways, such reference shall be taken to be to the Commissioner appointed under this Act.

Substitution of Commissioner for Minister, except in certain cases.

5 The Principal Act is hereby altered and amended as follows:—

I. The words "with the approval of the Minister" in Section Fourteen are repealed:

II. Wherever the word "Minister" occurs in the Principal Act (except as to Section Six and Sections Thirty-seven to Forty-four inclusive) the word "Commissioner" shall be substituted therefor throughout the Principal Act.

Interpretation.

6 In this Act and the Principal Act "Commissioner" means the Commissioner for Railways for the time being appointed under this Act.

Abolition of office of General Manager of Railways.

7 On the commencement of this Act the office of General Manager of Railways constituted under the Principal Act shall be abolished.

PART II.

THE RAILWAY COMMISSIONER.

Division I.—*Constitution, Appointment, and Tenure of Office.*

Authority and power of Commissioner.

8—(1.) The authority to carry out the Principal Act, as amended by this Act, shall be the Commissioner appointed as hereinafter provided.

(2.) The Commissioner shall be a body corporate by the name of "The Commissioner for Railways," and by that name shall have perpetual succession and a common seal, and be capable of suing and being sued, and shall have power to take, purchase, and sell goods, chattels, and other property for any of the purposes of this Act or the Principal Act, subject to the restrictions herein contained.

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9 The Governor shall from time to time appoint a Commissioner for Railways.

Appointment of Commissioner.

Such Commissioner shall, subject to this Act, hold office for Four years from the date on which his appointment takes effect.

Vacancies.

10 On the occurrence of a vacancy in the office of Commissioner the Governor may—

I. Appoint a person to be Commissioner, who, subject to this Act, shall hold the office for the term of Four years from his appointment: or

II. Appoint an Acting-Commissioner, who while so acting shall have the powers and perform the duties of the Commissioner.

Seal of Commissioner.

11 All courts, judges, and persons acting judicially shall take judicial notice of the common seal and of the signature of the Commissioner.

Salary of Commissioner.

12 The Commissioner shall receive the salary of One thousand two hundred Pounds a year.

The said salary is hereby charged on the Consolidated Revenue, and such revenue, to the extent required for the payment of the salary, is hereby permanently appropriated.

Commissioner eligible for reappointment.

13 The Commissioner shall, at the expiration of his term of office, be eligible for reappointment for a like term of Four years.

Deputy-Commissioner.

14 In case of illness, suspension, or absence of the Commissioner, the Governor may appoint some person to act as his deputy during such illness, suspension, or absence, and until such appointment is terminated by notice in the "Gazette."

Every person so appointed shall, while so acting, have all the powers and perform all the duties of the Commissioner.

Suspension and removal of Commissioner

15—(1.) The Commissioner may be suspended from his office by the Governor—

I. For misbehaviour, negligence, or incompetence: or

II. If he engages, during his term of office, in any employment outside the duties of his office: or

III. If he becomes bankrupt, or applies to take or takes the benefit of any Act relating to bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of his salary for their benefit: or

IV. If he becomes incapable of performing his duties: or

V. If he in anywise participates or claims to be entitled to participate in the profit of, or in any benefit or emolument arising from, any contract or agreement made by or on behalf of the Government.

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

(3.) The Commissioner, when suspended under this section, shall not be restored to office unless each House of Parliament, within Forty days from the time when such statement has been laid before it, declares by resolution that he ought to be restored to office.

(4.) If each House of Parliament within the said time so declares, the Commissioner shall be restored by the Governor accordingly, but otherwise may be removed from office.

(5.) The Commissioner shall not be removed from office except as hereinbefore provided.

Penalty for participation in contracts.

16 If the Commissioner in anywise participates or claims to be entitled to participate in the profit of, or in any commission, benefit, or emolument arising from, any contract or agreement made by or on behalf of the Government, he shall be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding Three years.

And if any party to any such contract allows the Commissioner to participate in the profits thereof, or receive any commission, benefit, or emolument arising therefrom, he shall be guilty of a misdemeanour, and liable to imprisonment for any term not exceeding Three years.

Certain Acts not to apply to Commissioner. 5 Ed. VII. No. 9.

17 Nothing in "The Public Service Act, 1905," or any amendment thereof, shall apply to the Commissioner.

Division II.—*Control and Property.*

Commissioner to manage railways.

18 Subject to the provisions of this Act, the Commissioner shall have the management, maintenance, and control of every Government railway.

Railway property not subject to rates, &c.

19 No rates, tax, or assessment shall be made, charged, or levied upon any railway, or upon any pier, wharf, jetty, station, yard, building, works, or other property vested in the Commissioner, unless the contrary is expressly provided in any Act.

Expenditure of money appropriated by Parliament.

20 All moneys appropriated by Parliament for the maintenance or management of the railways by this Act placed under the control of the Commissioner, and for all purposes in connection therewith, shall be expended under the control and management of the Commissioner.

Audit Act to apply to Commissioner. 1 Ed. VII. No. 15.

21 All moneys payable to the Commissioner under this or any other Act shall be collected and received by him on account of, and shall be paid into, the Consolidated Revenue; and the provisions of "The Audit Act, 1901," and of any other Act relating to the collection and payment of public moneys and the audit of the public account, shall, save as in this Act otherwise expressly provided, apply to the Commissioner and to all officers.

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Commissioner substituted for the Minister or General Manager with reference to all rights, liabilities, and privileges.

22—(1.) All contracts, bonds, and agreements entered into, made, or given before the passing of this Act, by or to the Minister or the General Manager of Railways in connection with the railways, or with the piers, wharves, jetties, stations, yards, buildings, lands, or rolling-stock, by this Act placed under the control of the Commissioner, shall be as binding, and of as full force and effect, respectively, against or in favour of the Commissioner, and may be enforced as fully and effectually as if, instead of the Minister or the General Manager of Railways as aforesaid, the Commissioner had been party thereto.

(2.) All liabilities incurred by the Minister or the General Manager of Railways before the commencement of this Act shall attach to and may be enforced against the Commissioner.

(3.) Any penalty, forfeiture, or other punishment incurred or to be incurred for any offence committed against the Minister or the General Manager of Railways in respect of the railways, or in respect of any such piers, wharves, jetties, stations, yards, buildings, lands, or rolling-stock, before the commencement of this Act, may be enforced and recovered by or on behalf of the Commissioner in the same way as the Minister or the General Manager of Railways might have enforced and recovered the same if this Act had not been passed.

Provision as to proceedings, &c., already commenced.

23—(1.) No action, prosecution, or other proceeding whatsoever, commenced before the passing of this Act, by or against the Minister or the General Manager of Railways shall abate or be discontinued or be prejudicially affected by this Act, but the same shall respectively continue and take effect in favour of or against the Commissioner appointed under this Act.

(2.) All judgments or orders made in favour of or against the Minister or the General Manager of Railways, and all fines or penalties imposed or incurred under the Principal Act, may be respectively enforced, levied, proceeded for, and recovered by, against, and in the name of the Commissioner appointed under this Act in the same manner as they might have been enforced, levied, proceeded for, and recovered if this Act had not been passed.

Actions by and against Commissioner.

24 Any action, suit, or other proceeding at law or in equity in respect of any claim by or liability of the Commissioner arising under this Act may be commenced and prosecuted by or against "The Commissioner for Railways" for the time being as the plaintiff or defendant therein, as the case may be, without otherwise naming him; and "The Commissioner for Railways" for the time being shall recover or be liable to, as the case may be, the damages and costs of any such action, suit, or other proceeding.

Division III.—*Powers, Duties, &c., of the Commissioner.*

Duties and powers.

25 The duties and powers respectively imposed and conferred by this Act are in addition to, and not in substitution for, the duties and powers respectively imposed or conferred by the Principal Act.

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Account to be presented annually to Parliament.

26 The Commissioner shall, once in every Twelve months, cause to be prepared a yearly railways working account showing the total gross receipts accruing from the railways during the period covered by the account, and the total expenditure upon the working, management, and maintenance during the same period; also a yearly account showing the total cost of construction of railways, including the value of the rolling-stock, fixed plant, and machinery, loose plant, stores, and office furniture under their respective headings.

PART III.

APPOINTMENT OF OFFICERS.

Commissioner to appoint officers.

27 All appointments to the Railway Service shall be made by, and tenable during the pleasure of, the Commissioner.

The Commissioner may appoint such and as many officers and employees as he thinks fit, and from time to time dismiss them, and may increase or diminish the number of officers.

The Commissioner shall pay such salaries, wages, and allowances to the officers and employees as he may by regulation prescribe, and as Parliament may appropriate for the purpose: Provided that the salaries, wages, and allowances prescribed by the Commissioner shall not be lower than those paid at the time of the Commissioner's appointment.

All appointments to permanent offices in the Railway Service shall be made in manner hereinafter mentioned.

Existing officers and employees deemed to have been appointed by Commissioner.

28—(1.) Every officer and employee in the Railway Department of the State at the time of the passing of this Act shall be deemed, for the purposes of this Act, to have been appointed by the Commissioner without any further or other appointment.

(2.) Nothing in this Act contained shall prevent the provisions of Section Thirty-four of "The Public Service Act, 1905," applying to any person employed permanently in the Railway Department.

Commissioner to take security from officers entrusted with money.

29 Before any person entrusted with the custody and control of moneys, whether collector or other officer or servant of the Commissioner, enters upon his office, the Commissioner shall take sufficient security from him for the faithful execution of his office, and such security may be that of any incorporated company or guarantee society approved of by the Commissioner in such form as the Commissioner may by regulations from time to time direct.

Officers to account.

30 Every officer appointed or employed by the Commissioner under or by virtue of this Act 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 moneys received by him on behalf of

the Commissioner, and such account shall state how, and to whom, and for what purpose such moneys have been disposed of, and together with such account such officer shall deliver the vouchers and receipts for such payments, and every such officer shall pay to the Commissioner, or to any person appointed by him to receive the same, all moneys which appear to be owing from the officer upon the balance of such account.

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31 The Commissioner may appoint from time to time, from the officers of the department, without extra salary, fit and proper persons 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.

Commissioner to appoint examiners.

32 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 may prescribe.

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

The names of all competitors who shall at such examinations have satisfied the examiners as to their proficiency shall forthwith be registered by the Commissioner in a book to be be kept for that purpose, in the order of merit as determined by such examinations; and 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 such examinations shall have been held, shall be made from the persons whose names are so registered, and in the order of such registration, the name registered First being first taken, and the others afterwards in regular sequence.

Appointment of additional persons.

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

Additional persons to be appointed on probation.

34 No probationer shall have his appointment confirmed until he shall have effected in some life insurance company carrying on business in the State, and approved by the Commissioner, an insurance on his life providing for the payment of a sum of money at his death should it occur before the age of retirement from the Railway Service, or, if he survive until that age, of a sum of money or annuity on the date of such retirement.

Appointee to effect an insurance on his life.

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Such insurance shall be continued, and the amount thereof fixed and increased from time to time in accordance with regulations to be made by the Commissioner in that behalf.

No policy of insurance so effected shall be, during the time such person remains in the Railway Service, assignable either at law or equity.

Transfers of officers and employees.

35 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.

Overtime payments.

36 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 to be kept.

37 The Commissioner 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, the length of service, salaries, and such other particulars with regard to such persons as he thinks fit, and shall from time to time cause entries to be made in such record-book of deaths, dismissals, resignations, promotions, and reductions, and 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.

PART IV.

REGULATIONS.

Regulations to be made.

38 The Commissioner shall make, and may from time to time alter and repeal, regulations—

I. For 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 the various branches of the said service:

II. For determining the number of branches of the Railway Service:

III. For determining the number and relative rank of classes in the various branches, and the maximum and minimum salaries payable to the officers of each class, and the annual increase of such salaries:

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iv. For determining the wages to be paid to the officers and employees temporarily employed in the Railway Service :

v. For regulating the duties to be performed by employees in the Railway Service, and the discipline to be observed in the performance of such duties, the granting of leave of absence from time to time, and sick pay, and arranging for the performance of duties during holidays, and for affixing to breaches of such regulations, according to the nature of the offences, such penalties as by this Act are authorised :

vi. For fixing the ages at which employees shall retire in the different branches of the Railway Service :

vii. For regulating and determining the scale on which employees in the various classes of the Railway Service shall insure their lives, or for the payment to them of a sum of money or annuity at the date of their attaining the age of retirement from the Railway Service :

viii. For the hearing and determining of any appeal by any employee :

ix. For altering or repealing any rules or regulations in force at the commencement of this Act with regard to railways or officers and employees in the Railway Service :

x. For regulating the purchase, care, custody, and issue of stores and materials, and the taking and keeping of the accounts relating thereto.

Further power.

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

JOHN VAIL,
GOVERNMENT PRINTER, TASMANIA