



ANALYSIS

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1952, No. 82

Title.

AN ACT to amend the Government Railways Act 1949.
[24 October 1952

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. This Act may be cited as the Government Railways Amendment Act 1952, and shall be read together with and deemed part of the Government Railways Act 1949 (hereinafter referred to as the principal Act).

1949, No. 40

New Zealand Railways Commission

2. (1) There is hereby established a management commission in respect of the railways and services lawfully carried on by the New Zealand Government Railways Department, which Commission shall be called the New Zealand Railways Commission. Establishment
of New
Zealand
Railways
Commission.

(2) The Commission shall consist of five Directors to be appointed from time to time by the Governor-General, of whom three shall be appointed from the members of the Department or full time employees of any service organization, and two shall be appointed from persons outside the Government service.

(3) No person shall be capable of being appointed to be, or of being, a Director or a deputy of a Director who is actively associated with, or financially interested in, the operation of any form of transport in competition with the Commission.

(4) The Governor-General may from time to time appoint a Director to be Chairman, and another Director to be Deputy Chairman, of the Commission. Every Director who is so appointed as Chairman or Deputy Chairman shall hold the office so long as he remains a Director of the Commission by virtue of an appointment made either before or at the time of his appointment as Chairman or Deputy Chairman:

Provided that, if the Deputy Chairman is appointed as Chairman, he shall thereupon cease to be Deputy Chairman of the Commission.

(5) No Director or deputy of a Director appointed from the members of the Department or from full time employees of any service organization shall devote himself to any occupation or business other than the business of the Department, and no Director or deputy of a Director shall act in any other capacity within the Department.

(6) For the purposes of the Superannuation Act 1947, No. 57 Directors and deputies of Directors shall be deemed to be employed in the Government service if they were appointed from members of the Department or full time employees of any service organization, but not otherwise.

(7) Every Director, and every deputy of a Director, appointed from members of the Department shall enjoy all the rights and privileges that he would have enjoyed if he had remained a member of the Department.

(8) The powers of the Commission shall not be affected by the fact that at any time there may be less than five Directors in office; and no act or proceeding of the Commission shall be invalidated in consequence of the subsequent discovery that any person acting as a Director or a deputy of a Director was incapable of being a Director or a deputy of a Director.

Term of office
of Directors.

3. (1) Except as otherwise provided in this Act, every Director shall be appointed for a term of three years, but may from time to time be reappointed for such period not exceeding three years as the Governor-General may from time to time determine.

(2) Unless he vacates office otherwise than by effluxion of time, every Director shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

Extraordinary
vacancies.

4. (1) Any Director, or any deputy of a Director, may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General, or may at any time resign his office by writing addressed to the Minister.

(2) A Director or a deputy of a Director shall vacate his office if he becomes actively associated with, or financially interested in, the operation of any form of transport in competition with the Commission.

(3) On a vacancy occurring in the office of Director otherwise than by effluxion of time, the Governor-General may appoint some fit person to be a Director for the remainder of the term for which the vacating Director was appointed.

Deputies of
Directors.

5. (1) In any case in which the Governor-General is satisfied that any Director is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Governor-General may appoint any person to act as deputy for that Director during his incapacity, and any such deputy shall, while he acts as such, be deemed to be a Director.

(2) No such appointment of a deputy and no acts done by him as such shall be questioned in any proceedings on the ground that the occasion for his appointment had not arisen or had ceased.

6. (1) The first meeting of the Directors shall be held on a day to be appointed in that behalf by the Chairman. Meetings of
Directors.

(2) Subsequent meetings of the Directors shall be held at such times and places as the Directors shall from time to time appoint.

(3) The Chairman or any three Directors may at any time call a special meeting of Directors.

(4) At all meetings of Directors three Directors (including two Directors appointed from members of the Department or full time employees of any service organization) shall be a quorum.

(5) The Chairman shall preside at all meetings at which he is present. If at any meeting the Chairman is not present or there is no Chairman, the Deputy Chairman shall preside at the meeting; and if the Deputy Chairman also is not present at the meeting or there is no Deputy Chairman, the Directors present shall select one of their number to be the Chairman of that meeting, and the person so selected shall have and may exercise all the powers and functions of the Chairman for the purposes of the meeting.

(6) At any meeting of the Directors the Chairman shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote.

(7) All questions before the Directors shall be decided by a majority of the valid votes recorded thereon.

(8) The General Manager shall attend all meetings of the Directors so far as it is practicable for him to do so:

Provided that, if the Directors so direct, the General Manager shall temporarily retire from any meeting.

(9) Subject to the provisions of this Act, the Directors may regulate their procedure in such manner as they think fit.

(10) Where for any reason it is not practicable to hold a meeting of the Directors for the transaction of any business, the assent of all the Directors signified in writing or by telegram to the doing of any act or

thing or to the giving of any order, direction, instruction, consent, or approval or to the exercise of any act of authority shall be effective as and deemed to be a resolution of the Commission duly passed at a meeting thereof; and in any such case a record of the action which is deemed to be a resolution of the Commission shall be entered, as of the date on which the last such assent was signified, in the minutes of the next meeting of the Directors.

Remuneration
and expenses
of Directors.

7. (1) There shall be paid to the Chairman, to the Deputy Chairman, and to the other Directors such remuneration by way of salaries, fees, or allowances as the Minister of Finance may from time to time approve.

(2) The Directors shall be paid travelling expenses and allowances at such rate as may from time to time be prescribed by regulations under this Act, or as may be approved by the Minister of Finance if there are no regulations or in cases where the regulations do not apply.

(3) All payments made pursuant to this section shall be paid out of the Working Railways Account.

General
Manager of
Railways.

8. The principal Act is hereby amended by repealing section five, and substituting the following section:—

“ 5. (1) There shall from time to time be appointed a General Manager of Railways, who, under the control of the Commission, shall be the Chief Executive Officer of the Commission, and the Permanent Head of the Department.

“(2) On the occurrence from any cause of a vacancy in the office of General Manager (whether by reason of death or resignation or otherwise), or if the General Manager is absent from duty or from his headquarters for any reason whatsoever, the powers, duties, and functions of the General Manager may be exercised and performed by any person authorized in that behalf by the Minister after he has considered the recommendation of the Commission as to the person to be so authorized.”

Delegation of
powers of
Commission
and General
Manager.

9. (1) The Commission may from time to time, by writing under its seal, either generally or particularly, delegate to any Director, or to the General Manager, all or any of its powers under this Act or any other Act (including the power to execute deeds and other

documents on behalf of the Commission, but not including the power of delegation conferred by this subsection).

(2) In any case where the Commission has, pursuant to subsection one of this section, delegated any of its powers to the General Manager, the General Manager may, with the prior approval in writing of the Commission, delegate such of those powers as the Commission thinks fit to any employee or to the holder for the time being of any specified office in the Department.

(3) The General Manager may delegate any other power which he is entitled to exercise under the principal Act, as amended by this Act, to any employee or to the holder for the time being of any specified office in the Department.

(4) Every delegation under this section shall be revocable at will; and no such delegation shall prevent the exercise of any power by the Commission in any case where it makes the delegation, or by the General Manager in any case where he makes the delegation.

(5) The fact that any Director or the General Manager or any other employee exercises any power of the Commission shall, in the absence of proof to the contrary, be sufficient evidence of his authority so to do; and any power so exercised shall be as valid and binding as if made by the Commission itself.

(6) In the event of the General Manager to or by whom any such delegation has been made ceasing to hold office, the delegation shall continue to have effect as if made to or by the person for the time being holding office as General Manager or, if there is no General Manager in office, to or by the person for the time being authorized to perform the powers, duties, and functions of the General Manager.

(7) All delegations made before the commencement of this Act of powers transferred by this Act to the Commission shall, so far as they are subsisting at the commencement of this Act, enure for all purposes as if they were made under this section.

(8) Unless and until any such delegation is revoked, it shall continue in force according to its tenor.

10. (1) The Commission shall have an official seal for the authentication of instruments and documents executed or issued by the Commission, and all Courts shall take judicial notice of that seal.

Seal of
Commission.

(2) Any instrument or document requiring to be executed or issued by the Commission shall for all purposes be deemed to be duly executed or issued if the seal of the Commission, attested by the signature of the Chairman or any two Directors of the Commission, is duly affixed thereto.

General functions and duties of Commission.

11. (1) The general functions and duties of the Commission shall be to do all things which, in its opinion, are necessary for the efficient management, operation, and development of the Government railways and every service lawfully carried on by the Commission, within the limits of the moneys appropriated by Parliament for expenditure out of the Working Railways Account.

(2) Nothing in this Act shall derogate from the functions of the Government Railways Industrial Tribunal.

Commission to give effect to directions of the Government.

12. In the exercise of its functions and powers the Commission shall—

- (a) Have regard to any representations that may be made by the Minister in respect of any functions or powers of the Commission; and
- (b) Give effect to any decision of the Government in relation thereto conveyed to the Commission in writing by the Minister.

General powers of Commission.

13. Except as otherwise provided in this Act, all the powers, duties, and functions which the Minister and the General Manager had immediately before the commencement of this Act under the principal Act and any instrument are hereby transferred to and shall thereafter be exercised by the Commission; and every reference to the Minister and the General Manager in every provision of the principal Act which was in force immediately before the commencement of this Act, and in any instrument made before the commencement of this Act, shall be read as a reference to the Commission:

Provided that—

- (a) Nothing in this section shall affect the powers conferred on the Minister by, and the references to the Minister in, section two, section four, section ten, subsection one of section thirty-five, subsection two of section thirty-eight, subsection two of section forty, section

forty-two, paragraphs (b) and (c) of section fifty-eight, section sixty-eight, section seventy-one, section seventy-three, subsection two of section seventy-six, section seventy-seven, subsection one of section seventy-nine, subsection one of section eighty-four, subsection one of section eighty-seven, paragraph (c) of subsection one of section ninety-two, paragraph (i) of subsection one of section ninety-five, subsections two and three of section ninety-six, subsection four of section ninety-seven, subsection two of section one hundred, and subsection three of section one hundred and sixteen of the principal Act; and any instrument granting or evidencing title to property; and any licence under the Transport Act 1949 or any other Act: 1949, No. 7

- (b) Nothing in this section shall require any reference to the General Manager in section two, paragraphs (b) and (c) of section fifty-eight, subsection one of section seventy-nine, section eighty-two, and subsection one of section eighty-four of the principal Act to be read as a reference to the Commission.

14. (1) The Commission shall from time to time determine the capital works which it considers necessary in order to provide an adequate service to meet public requirements. Powers and duties in relation to capital works.

(2) The Commission shall prepare and present reports on all such proposed works to the Minister; and, in notifying the Commission of the decision of the Government on any such matter, the Minister, after consultation with the Minister of Finance, shall advise the Commission when the necessary capital moneys will be made available for the works.

(3) On being advised of the Government's decision on the proposed capital works, the Commission shall take such steps as may be necessary to ensure that the works shall, to the extent to which they have been approved, be carried out in an orderly and progressive manner.

Commission
may acquire
or dispose of
shares, stock,
or interest in
company or
business.
1933, No. 29

15. (1) The Commission may from time to time, in the name and on behalf of the Crown, subscribe for or otherwise acquire shares or stock in the capital of, or any other interest in, any company registered under the Companies Act 1933 or any other organization or business, being a company, organization, or business carrying on or interested in the establishment, maintenance, or operation of any transport undertaking within New Zealand.

(2) The Commission or any person authorized in that behalf by the Commission may from time to time exercise on behalf of the Crown all or any of the rights and powers of the Crown as the holder of any such shares or stock or other interest.

(3) The Commission may sell or otherwise dispose of any such shares or stock or other interest in such manner and on such terms as it thinks fit.

Closing of
unprofitable
lines.

16. The Commission, on being satisfied that any railway or part of a railway or service lawfully carried on by the Commission can continue to be operated only under conditions that will result in the revenue therefrom being insufficient to cover the working expenses thereof, or on being satisfied that the continued operation of any railway or service or part of a railway or service is otherwise not in the public interest, may, with the consent of the Minister, cease to operate it.

Property.

17. The Commission shall have the management and control of all property of any description whatsoever which, at or after the commencement of this Act, is vested in the Crown for the purposes of the Department.

Power to
reappoint
Directors and
deputies to
positions in the
Department.

18. (1) Any person who immediately prior to his appointment as a Director or as a deputy of a Director was a member of the Department may, upon his ceasing to be a Director or a deputy of a Director, be reappointed as a member of the Department at such rate of pay as the Minister may determine, being not less than the rate of pay which the Minister shall determine is then appropriate to the position which the Minister considers would have been occupied by that person if he had not been appointed as a Director or a deputy of a Director.

(2) Any person who immediately prior to his appointment as a Director or as a deputy of a Director was a full time employee of any service organization may,

upon his ceasing to be a Director or a deputy of a Director, be reappointed to the Department under section eighty of the principal Act as if his engagement with the service organization had then terminated.

19. All acts of authority of any nature by the Minister or the General Manager before the commencement of this Act in exercise or performance of powers, duties, or functions by this Act conferred or imposed on the Commission shall, so far as they are subsisting at the commencement of this Act, enure for all purposes as if they were acts of authority by the Commission.

Savings of acts of authority by Minister and General Manager.

20. Section seventy-seven of the principal Act is hereby amended—

Method of appointment to Government Railways Department.

(a) By adding to subsection one the words “ after he has considered the recommendation of the Commission ”:

(b) By omitting from subsection two the words “ General Manager ”, and substituting the word “ Commission ”.

21. Section eighty-two of the principal Act is hereby amended—

Annual determinations as to suitability for promotion.

(a) By omitting the words “ General Manager ” in each place where they occur, and substituting in each case the word “ Commission ”:

(b) By inserting in subsection one, after the word “ position ” where it first occurs, the words “ the appointment to which is made by the Commission ”.

22. The Acts specified in the Schedule hereto are hereby consequentially amended in the manner indicated in that Schedule.

Consequential amendments.

Miscellaneous

23. The principal Act is hereby amended by repealing section sixty-five, and substituting the following section:—

Rail traffic to have right of way.

“ 65. For the purpose of determining the speed at which it is reasonable to travel, every employee responsible for the driving or control of any locomotive, rail-car, carriage, wagon, or other traffic on the railway line shall be entitled to assume that all persons will keep clear, and all vehicles which do not use the railway line and all animals will be kept clear, of traffic using the railway line; and, so long as such care as is reasonable in the circumstances is taken in each case by all

employees responsible, all such locomotives, rail-cars, carriages, wagons, and other traffic may proceed past any station, level crossing, or elsewhere on the railway line at a speed which would be reasonable if there was no possibility of that part of the railway line being obstructed by any such vehicle, person, or animal; and neither the Crown, nor the Minister, nor the Commission, nor any employee shall be deemed negligent merely because any employee acts on that assumption for the purpose of determining the speed at which it is reasonable to travel, or merely because any such locomotive, rail-car, carriage, wagon, or other traffic proceeds at such a speed:

“ Provided that, where an employee has reason to believe, or by the exercise of reasonable care would have reason to believe, that a collision is about to occur between any such locomotive, rail-car, carriage, wagon, or other traffic, and any such vehicle, person, or animal, that employee shall be responsible to take all steps reasonably possible to prevent the collision, and the provisions of this section relating to negligence shall not apply to any such employee in so far as he fails to do so or to the Crown or the Minister or the Commission in so far as any employee fails to do so.”

**Special
promotions.**

24. (1) Section eighty-four of the principal Act is hereby amended by inserting in subsection three, after the words “ any position ”, the words “ or the special qualifications or experience which it is desirable that an occupant of any position should possess ”.

(2) Section eighty-four of the principal Act is hereby further amended by adding the following subsection:—

“(9) The Commission may by official circular declare any employee who was promoted from the General Division to a position in the Salaried Division at any time between the seventh day of December, nineteen hundred and forty-five, and the commencement of this subsection to have been specially promoted to that position, and in any such case the employee shall be deemed to have been specially promoted to that position from the date of his appointment thereto. In making any declaration under this subsection the Commission shall be bound by the considerations referred to in subsection three of this section, as amended by section twenty-four of the Government Railways Amendment Act 1952.”

SCHEDULE
CONSEQUENTIAL AMENDMENTS

Schedule.

Section 22

Title of Enactment.	Number of Section Affected.	Nature and Extent of Amendments.
1949, No. 40— The Government Railways Act 1949	Section 2 ..	By inserting, after the definition of the term "Minister", the following definition :— " 'New Zealand Railways Commission' or 'Commission' means the New Zealand Railways Commission constituted under the Government Railways Amendment Act 1952 : ".
	Section 2 ..	By omitting from the definition of the term "official circular" the words "General Manager", and substituting the word "Commission".
	Sections 6 and 7	By repealing these sections.
	Section 9 ..	By omitting from subsection (1) and also from subsection (3) the words "hand of the Minister", and substituting in each case the words "seal of the Commission".
	Section 11 (3) ..	By omitting the words "either of those Ministers" and the words "the said Ministers", and substituting in each case the words "the Commission or the Minister of Works".
	Section 40 (2) ..	By omitting the word "Minister", where it first occurs, and substituting the word "Commission".
	Section 42 (1) ..	By omitting the word "Minister", and substituting the words "Minister or the Commission".
	Section 51 ..	By omitting from the proviso the words "Minister upon the recommendation of the General Manager, who shall, before making his recommendation", and substituting the words "Commission which shall"; also by omitting the words "in making his recommendation".
	Section 58 ..	By omitting from paragraph (b) and also from paragraph (c) the words "the Minister or the General Manager", and substituting in each case the words "the Commission or the General Manager".
	Section 79 (1) ..	By omitting the words "the last preceding section, the Minister or the General Manager", and substituting the words "sections seventy-seven and seventy-eight of this Act, the Minister or the Commission".

SCHEDULE—continued
CONSEQUENTIAL AMENDMENTS—continued

Title of Enactment.	Number of Section Affected.	Nature and Extent of Amendments.
1949, No. 40— <i>continued</i> The Government Railways Act 1949	Section 84 (1) ..	By omitting the words “the Minister or the General Manager”, and substituting the words “the Minister or the Commission”.
	Section 90 (2) ..	By repealing the proviso.
	Section 92 (1) (c)	By omitting the word “Minister”, and substituting the words “Chairman of the Appeal Board”.
	Section 100 (2) (a)	By omitting the word “Minister” where it first occurs, and substituting the word “Commission”.
	Section 100 (2) (c)	By omitting the word “Minister”, and substituting the word “Commission”.