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No. , 1919.

A BILL

To amend the Government Railways Act, 1912, the Government Railways (Appeals) Act, 1916, the Government Railways (Amendment) Act, 1916, the Government Railways (Further Amendment) Act, 1916, and the Workmen's Compensation Act, 1916; to authorise the Railway Commissioners to open stores on railway construction works, and for that purpose to amend certain Acts; to provide for the payment of the value of accrued leave to discharged railway employees; to provide for the method of electing members of the Railway Superannuation Board and the Railway Appeals Board; to authorise the Railway Commissioners to sell electricity; and for purposes incidental thereto or consequent thereon.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Government Railways (Amendment) Act, 1919." Short title.

(2) In this Act the expression "the Principal Act" means the Government Railways Act, 1912, as amended by the Government Railways (Appeals) Act, 1916, the Government Railways (Amendment) Act, 1916, and the Government Railways (Further Amendment) Act, 1916.

(3) This Act shall be read with the Principal Act.

Amendments of Principal Act.

2. The Principal Act is amended as follows :— Amendments of Principal Act.

- (i) Section five, subsection one, by substituting the word "two" for the word "three."
- (ii) Section nine, by omitting the words "each of the other two Assistant Railway Commissioners" and inserting "the other Assistant Railway Commissioner" in lieu thereof.
- (iii) Section ten, by omitting the words "The quorum at any meeting of the Commissioners shall be as fixed from time to time by the Governor" and inserting "At any meeting of the Commissioners two shall form a quorum" in lieu thereof.
- (iv) Section 10c, subsection one, by omitting the word "any" in the first line of the third paragraph and inserting "either."
- (v) Section eighty-seven,—
 - (a) by adding the following paragraph at the end of subsection two :—

If any member of the board—

 - (a) ceases to be an officer, or
 - (b) is convicted of any criminal offence, or
 - (c) becomes of unsound mind, or
 - (d)

(d) absents himself without leave from three consecutive meetings of the board,

his office shall thereupon become vacant.

(b) by adding thereto the following subsection :—

(4) Notwithstanding anything to the contrary contained in this Part, if the Commissioners signify in writing that any appeal by an officer, or any charge made against an officer, is in respect of a matter affecting the safe working of the railways or tramways, then such appeal shall not be heard nor such charge investigated by the board, but such appeal shall be heard by the Commissioners, and such charge shall be inquired into by the officer at the head of the branch in which the officer so charged is employed, and the first-mentioned officer shall be entitled to appeal to the Commissioners against the decision of the officer at the head of his branch.

(vi) Section 100B is repealed.

(vii) The term " officer " as defined by section one hundred and nine is amended by the addition of the following words :— " nor persons appointed to temporarily occupy the positions of officers who have enlisted for active service in the present war :

Repeal of
s. 100B.
Amendment
of the term
" officer."

Provided that any person appointed to temporarily occupy the position of any officer who has enlisted for active service in the late war between Great Britain and Germany shall be entitled, on application in the prescribed manner to the board, within one year from the commencement of the Government Railways (Amendment) Act, 1918, to a refund of the deductions (if any) made from his salary and emoluments under this Part, together with interest at the rate prescribed on the amounts of such deductions from the dates when they were respectively made."

Certain temporary officers entitled to refund.

(viii)

- (viii) (1) Section one hundred and ten is repealed and the following section substituted therefor :—

Repeal of s. 110 of the Principal Act.

110. The board shall consist of seven persons, namely,— three officers appointed by the Governor for a term of five years; three officers elected for a term of three years, of whom two shall be elected by and chosen from the officers in the railway service, and one by and from the officers in the tramway service, under regulations made under this Part of this Act; and the Chief Commissioner, who shall ex officio be chairman of the board.

Substituted section.

The superannuation board.

If any member of the board—

- (a) ceases to be an officer, or
- (b) is convicted of any criminal offence, or
- (c) becomes of unsound mind, or
- (d) absents himself without leave from three consecutive meetings of the board,

his office shall thereupon become vacant.

Any vacancy in the board shall be filled by appointment or election as aforesaid, as the case may be. Any person elected shall hold office for the unexpired term of office of the person whose vacancy he fills.

(2) This amendment shall take effect on the day of _____, on which day the present board is hereby dissolved.

- (ix) Section one hundred and sixteen is repealed. Repeal of s. 116 of Principal Act.
- (x) Section one hundred and twenty-five by omitting all the section after the word “gratuities.” Amendment of s. 125.
- (xi) Section one hundred and twenty-six by the addition of the following :— Amendment of s. 126.

“ When any officer, who has so transferred any such policy, leaves the service, the board shall, on the repayment by him of the amount of the premiums paid by it on such policy, cause the policy to be retransferred to such officer.

If

If such officer is unable or unwilling to repay such amount, the board may surrender the policy to the insurance company with which it was effected, and from the moneys received as the result of such surrender may reimburse itself to the extent of the amount of the premiums paid by it, together with interest thereon, at the rate of three and a half per centum per annum from the respective dates of payment, and shall hand over the balance (if any) to such officer."

3. (1) The Commissioners may, in connection with the construction of any lines of railway, carry on stores for the supply of goods to the workmen and other persons engaged upon such work.

(2) Notwithstanding anything to the contrary contained in any Act, all sums of money due by such persons to the Commissioners for goods supplied by them may be deducted from the wages or salaries of such persons.

4. (1) Any employee of the Commissioners who resigns or retires, or whose services are dispensed with otherwise than for an offence, shall be entitled to be paid for all leave of absence accrued to him.

(2) When an employee of the Commissioners has been dismissed for an offence he shall not be entitled to the value of any accrued leave, but the Commissioners make such payment in respect thereof as they think fit.

5. Elections of officers under section one hundred and ten of the Principal Act shall be conducted on the preferential voting system, and the Commissioners shall by by-laws, to be made under Part VII of the said Act, prescribe the method of voting and of counting votes.

Amendment of the Workmen's Compensation Act, 1916.

6. (1) The following section is inserted next after section five of the abovementioned Act :—

5A. A workman shall not be entitled to compensation under and also independently of this Act :

Provided—

(1) that nothing in this Act shall affect any civil liability of an employer when the injury

New section.

Workman not entitled to compensation under the Act, and also independently of the Act.

injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible; and

- (2) that, in the case of death or permanent incapacity, any workman who succeeds in his claim for compensation under this Act shall also be entitled to a refund of the amount of any contributions or deductions made by him, or out of his salary or wages, and paid to any superannuation account under any other Act, with interest thereon at the rate of four per centum per annum from the respective dates when such contributions or deductions were made.

(2) Paragraph (c) of subsection two of section five and the proviso to section thirteen of the same Act are repealed. Amendments of ss. 5 and 13.

Power to sell electricity.

7. In this Part—

“Electricity” means electricity, electric current, or any like agency.

“Electric line” means a wire or wires, conductor, or other means used or intended to be used for the purpose of applying, conveying, transmitting, or distributing electricity, and any casing, coating, tube, pipe, or insulator wholly or partly enclosing, surrounding, or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, or distributing electricity.

“Governor” means the Governor with the advice of the Executive Council.

“Private purposes” means any purposes whatever to which electricity may for the time being be applicable (not being public purposes) except the transmission of any telegram or telephonic message.

“Public

- “Public purposes” means lighting any place or building belonging to or subject to the control of the Commissioners or any street.
- “Public work” means any work carried out by or under the supervision of or on account of the Government or any department of the Government or Minister of the Crown.
- “Street” means any square, court, alley, highway, lane, road, thoroughfare, or public place or passage.
- “Works” means and includes electric lines, meters, accumulators, fittings, and apparatus for the supply of electricity, also any buildings, machinery, engines, plant, matters, or things of whatever description required, used, or intended to be used, to generate or supply electricity, and to carry into effect the purposes of this Act.

8. It shall be lawful for the Commissioners to generate and supply electricity for any public or private purposes, or for any public purposes and any private purposes.

Commissioners may supply electricity.

9. The Commissioners, for the purpose of generating and supplying electricity, may use all or any lands now vested in them for any purpose, and may purchase, lease, acquire, and hold all other lands, and construct, purchase, and acquire all works, and purchase and acquire all interests in and licenses for the use of any patented or protected processes, inventions, machinery, apparatus, methods, and other things, and enter into all contracts, appoint officers and servants, and generally do all acts and things which they may deem necessary or desirable for the purpose of such generation and supply.

General powers of Commissioners.

10. It shall be lawful, with the approval of the Governor, for the Commissioners to sell or exchange any lands acquired under the authority of this Act, or to lease the same upon such terms and conditions as to the Commissioners may seem meet.

Power to sell, exchange, or lease lands.

11. The Commissioners may open and break up the soil and pavement of any street, and open and break up any sewers, drains, or tunnels within or under such streets,

Power to break up streets, and to open drains.

streets, and may construct subways and drains, and may lay down and place under or over any street any electric lines, and from time to time repair, alter, or remove the same, and for the purposes aforesaid may remove and use all earth and materials in and under such streets, and may in any such street erect any posts, pillars, standards, lamps, and other works, and do all other acts which they may from time to time reasonably deem necessary for supplying electricity, and may lay any electric line, branch, or other apparatus from any main or branch electric line into, through, or against any place or building for the purpose of lighting the same, and provide and set up any works in their opinion necessary for securing thereto a complete supply of electricity, and for measuring and ascertaining the extent of such supply: Provided that nothing herein shall authorise or empower the Commissioners to construct or place any works into, through, against, or in any place, building, or land not dedicated to public use without the consent of the owners and occupiers thereof, except that the Commissioners may at any time make entry, and construct and place any new works instead of such works as shall have been lawfully constructed or placed, and may repair or alter any works so constructed or placed.

12. Subject to the provisions of this Act—

- (i) The Commissioners may alter the position of any pipes, wires, sewers, drains, or tunnels being made under any street or place which may interfere with the exercise of their powers under this Act on previously making or securing such compensation to the owners of such pipes, wires, sewers, drains, or tunnels, and on complying with such conditions as to the mode of making such alterations as may before the commencement of such alterations be agreed upon between the Commissioners and such owners, or in case of difference as may be determined by arbitration.
- (ii) Any person or public authority lawfully competent so to do may in like manner alter the position

Power to
alter position
of pipes,
wires, &c.

position of any works of the Commissioners being under or over any such street or place as aforesaid which may interfere with the lawful exercise of any powers vested in such person or authority in relation to such street or place, subject to the like provisions, conditions, and restrictions as are in the first subsection of this section contained.

13. When the Commissioners open or break up the road or pavement of any street, or any sewer, drain, or tunnel, they shall with all possible speed complete the work for which the same shall have been opened or broken up, and fill in the ground and reinstate and make good the road or pavement, or the sewer, drain, or tunnel so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up cause the same to be fenced and guarded, and shall at night-time cause a light sufficient for the warning of passengers to be set up and maintained against or near such road or pavement where the same shall be open or broken up.

Streets, &c.,
to be
reinstated.

14. The Commissioners shall not, in the exercise of the powers conferred by this Act, construct, lay down, or place any works for the supply of electricity whereby any public work is or may be injuriously affected. And the Commissioners and their agents shall conform with such reasonable requirements, either general or special, as may from time to time be made by the Secretary for Public Works for the purpose of preventing any such telegraph or telephone line or other public work from being injuriously affected by the works of the Commissioners, and on failure to conform with the said requirements, or any of them, the Secretary for Public Works may forthwith remove any works of the Commissioners for the supply of electricity by which any public work is or may be injuriously affected. Any difference which arises between the Secretary for Public Works and the Commissioners or their agents with respect to any requirements so made shall be determined by arbitration.

Protection to
telegraph and
telephone
lines and
other public
works.

15.

15. One month at least before commencing the execution of any works which involve the placing of works in, under, along, or across any street, highway, or public bridge on which any telegraph, telephone, or railway line may be (not being repairs to or renewals of then existing works of which the character and positions are not altered), the Commissioners shall serve upon the Secretary for Public Works, the Metropolitan Board of Water Supply and Sewerage, the Australian Gaslight Company, and such other person or corporation as the Secretary for Public Works may by writing under his hand addressed to the Commissioners require to be notified, or leave at their respective offices addressed to them, notices describing the proposed works, and the gauge of any electric line and the current and potential to be carried, together with a plan of the proposed works showing the position of the said works and the mode in which the works are intended to be executed and the manner in which it is intended that the street, highway, or bridge shall be interfered with, and shall at the request of the Secretary for Public Works, made at any time, give him such further information with reference to the works as he may desire.

Notice of works with plan to be served.

16. In the exercise of their powers under this Act the Commissioners shall cause as little detriment and inconvenience and do as little damage as possible, and shall make full compensation to all persons for all damage sustained by them by reason or in consequence of the exercise of such powers, the amount of such compensation in case of difference to be determined by arbitration or action at law at the election of the party aggrieved: Provided that the Commissioners may in all cases be at liberty to set up by way of defence or in mitigation of damages, as the case may be, that the person claiming compensation has by his own act, neglect, or default caused or contributed to the damages in respect of which he claims to be compensated.

Compensation for damage.

17. The Governor may make regulations to be observed during the construction, alteration, repair, or maintenance of works for securing the safety of persons and private or public property from injury from fire or otherwise,

Governor may make regulations for securing safety of public.

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otherwise, and may in those regulations impose any penalty not exceeding *one hundred* pounds for any breach of the same, which penalties may be recovered in a summary way before any stipendiary magistrate.

18. The Commissioners may from time to time enter into any contract with any person for supplying with electricity any place or building, or for providing any person with electric lines, burners, meters, lamps, or other fittings and things, and for the repair thereof, in such manner and upon such terms as to charges, place, and mode of payment and otherwise in security of the Commissioners as shall be agreed upon.

Power to contract for the supply of electricity and fittings.

19. The Commissioners may let any meter for ascertaining the quantity of electricity consumed or supplied and any fittings thereto, for such remuneration and on such terms in respect of the repair of such meter and fittings, and for securing the safety and return thereof to the Commissioners as may be agreed upon between the hirer and the Commissioners, and such remuneration and other moneys payable under the terms agreed upon shall be recoverable in the same manner as charges due to the Commissioners for electricity.

Commissioners may let meter.

20. The Commissioners shall do all things reasonable to keep all meters on hire to any consumer in proper order for correctly registering the quantity of electricity supplied, and in default of the Commissioners so doing the consumer shall not be liable to pay remuneration for the use of the same during such time as such default continues.

Commissioners to keep meters in repair.

21. Every meter used for ascertaining the quantity of electricity supplied by the Commissioners shall, during the continuance of such supply and until all charges in respect thereof have been paid, be under the sole control of the Commissioners, whether such meter be the property of the Commissioners or not, and no person shall be at liberty to cut, connect, tap, fix, alter, remove, or tamper with any electric line, lamp, meter, or fittings used in connection with the supply of electricity by the Commissioners unless authorised in writing by the Commissioners or their agents duly authorised in that behalf:

Meter not to be interfered with and connections not to be made by unauthorised persons.

Provided

Provided that nothing in this section shall affect the lawful exercise of any power in that behalf vested in any competent person or public authority.

22. The register of the meter used for ascertaining the quantity of electricity supplied by the Commissioners shall be prima facie evidence of such quantity.

Register of meter to be prima facie evidence.

23. The Commissioners shall not be entitled to prescribe any special form of lamp or burner to be used by any person, or in any way to control or interfere with the manner in which electricity supplied by it in pursuance of this Act is used: Provided always that no person shall be at liberty to use any form of lamp or burner, or to use the electricity supplied to him for any purposes, or to deal with it in any manner so as to unduly or improperly interfere with the supply of electricity to any other person, and if any dispute or difference as to the matters aforesaid arises between the Commissioners and any person entitled to be supplied with electricity in pursuance of this Act, such dispute or difference shall be determined by arbitration.

Commissioners not to prescribe manner of using electricity.

24. Where a supply of electricity is provided in any locality for private purposes, all persons within such locality shall on application be entitled to a supply on the same terms as the terms on which any other person in such locality is, under similar circumstances, entitled to a corresponding supply.

Obligation to supply electricity.

25. If any person neglect to pay any charge for electricity, or any other sum due to the Commissioners in respect of or incidental to the supply of electricity to such person, the Commissioners may without notice cut off his supply of electricity, and for that purpose may cut, disconnect, or remove any works, and may, until such charge or other sum, together with any expenses incurred by the Commissioners in cutting off such supply of electricity as aforesaid is fully paid, but no longer, discontinue the supply of electricity to such person.

Power to cut off supply.

26. Any person who unlawfully and maliciously cuts or injures any electric line or work erected in pursuance of this Act, with intent to cut off any supply of electricity, shall be guilty of felony, and be liable to

Injuring works with intent to cut off supply.

be

be kept in penal servitude for any term not exceeding three years, or to be imprisoned, with or without hard labour, for any term not exceeding one year; but nothing in this section shall exempt a person in respect of any offence which is punishable under any other provision of this Act, or under any other Act, or at common law, so that no person be punished twice for the same offence.

27. Any person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes, or uses any electricity provided in pursuance of this Act, shall be guilty of simple larceny and punishable accordingly. Stealing electricity.

28. Any person who wilfully and unlawfully removes, destroys, or damages any electric line or any pillar, post, lamp, meter, or other works connected with or relating to the supply of electricity by the Commissioners in pursuance of this Act, or who wilfully and unlawfully extinguishes any of the public lamps or lights maintained by the Commissioners in pursuance of this Act, or wastes, or wilfully and wrongfully uses any of the electricity supplied by the Commissioners in pursuance of this Act, shall for each such offence forfeit to the Commissioners a sum not exceeding *fifty* pounds in addition to the amount of damage done. Penalty for removing electric line, &c.

29. Any person who carelessly or accidentally breaks, throws down, or damages any electric line, or any pillar, post, lamp, or other works belonging to the Commissioners, or under their control, shall forfeit and pay such sum of money by way of satisfaction to the Commissioners for the damage done not exceeding *fifty* pounds as a stipendiary magistrate shall think reasonable: Provided that this section shall not affect any other remedy. Penalty for breaking electric lines, &c.

30. Any person who wilfully or fraudulently, or by culpable negligence, injures or suffers to be injured, any electric line, or any meter, fittings, or works belonging to the Commissioners, or alters the index to any meter, or prevents any meter from duly registering the quantity of electricity supplied, or fraudulently abstracts, consumes, Penalty for tampering with meter, &c.

consumes, or uses electricity supplied by the Commissioners, shall, without prejudice to any other right or remedy for the protection of the Commissioners, or the punishment of the offender, for every such offence forfeit to the Commissioners a sum not exceeding *twenty-five* pounds in addition to the amount of damage.

31. In any case in which any person has been convicted of wilfully or fraudulently injuring, or suffering to be injured, any electric line, or any meter, fittings, or works belonging to the Commissioners, or altering the index to any meter, or preventing any meter from duly registering the quantity of electricity supplied, the Commissioners may also until the matter complained of has been remedied, but no longer, discontinue the supply of electricity to the person so offending, notwithstanding any contract previously existing.

Supply of electricity may also be cut off.

32. The existence of artificial means for causing such alteration or prevention, or for abstracting, consuming, or using electricity supplied by the Commissioners when the meter is under the custody or control of the consumer, shall be prima facie evidence that such alteration, prevention, abstraction, or consumption (as the case may be) was within the knowledge of the consumer.

Evidence that meter has been tampered with.

33. Any officer appointed by the Commissioners in that behalf may, at all reasonable times, enter any place or building to which electricity is or has been supplied by the Commissioners in pursuance of this Act for the purpose of inspecting and testing the electric lines, meters, accumulators, fittings, apparatus, and works for the supply of electricity belonging to the Commissioners, and of ascertaining the quantity of electricity consumed or supplied or, where a supply of electricity is no longer required, or where the Commissioners are authorised to take away and cut off the supply of electricity from any premises, for the purpose of removing any electric lines, accumulators, fittings, apparatus, or works belonging to the Commissioners, and repairing all damage caused by such entry, inspection, or removal.

Power to enter premises and inspect or remove fittings, &c.

34. Where any electric lines, meters, accumulators, fittings, apparatus, or works belonging to the Commissioners are placed in or upon any place or building (not being

Commissioners' fittings not to be subject to distress, execution, &c.

being in the possession of the Commissioners) for the purpose of supplying electricity in pursuance of this Act, such electric lines, meters, accumulators, fittings, apparatus, or works shall not be subject to distress or to the landlord's remedy for rent of the premises where the same may be, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the person in whose possession the same may be: Provided that nothing in this section shall affect any distress or execution lawfully made or issued upon or against the Commissioners.

35. All actions or other proceedings against the Commissioners, their officers, agents, or servants, for anything done or reasonably supposed to have been done in pursuance of this Act, shall be commenced within twelve months after the matter complained of was committed and not otherwise; and notice in writing of any such action or proceedings, and of the cause thereof, shall be given to the defendant one month at least before the commencement of the proceeding; and in every such proceeding the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such proceeding if tender of such sufficient amends shall have been made before the same was commenced, or if a sufficient sum of money shall have been paid into a court after such commencement by or on behalf of the defendant, together with costs as between party and party incurred up to that time. And if a verdict shall be entered for the defendant, or the plaintiff shall become non-suited or discontinue such proceeding, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover his costs and have the like remedy for the same as any defendant has in law in like cases.

Limitation of
action
against the
Commis-
sioners.

36. Any arbitration in pursuance of this Act shall be conducted in accordance with and subject to the provisions of the Arbitration Act of 1892, and for the purposes of reference to arbitration thereunder this Act shall be deemed to be a submission between the parties within

Arbitration.

within the meaning of the same. The arbitrator shall in every case have power to direct how and by whom the cost of the reference and award shall be paid.

37. All fines, forfeitures, or other sums recovered by the Commissioners in pursuance of this Act shall be carried to the credit of the electric light account.

Sums recovered to go to electric light account.

38. In any case in which any summary conviction has been had, or any order for the payment of money has been made, in pursuance of this Act, before any stipendiary magistrate, the defendant may appeal to the Court of Quarter Sessions.

Appeals from summary convictions, &c.

39. The Commissioners may under Part VII of the Principal Act, but subject nevertheless to any regulations made by the Governor as herein provided, make all such by-laws and do all such other necessary matters and things as may be necessary for carrying out the objects of this Act.

Commissioners may make by-laws, &c.

40. The Commissioners shall not supply electricity within any municipality or shire without the consent of the council thereof (which consent such council is hereby empowered to give) and upon such terms and conditions as may be mutually agreed upon.

Commissioners may extend operations into other municipalities with consent.

41. The council of a municipality or shire may contract with the Commissioners for a supply of electricity to such council and upon such terms and conditions as may be agreed upon.