

1982

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN NATIONAL RAILWAYS COMMISSION BILL 1982

EXPLANATORY MEMORANDUM

(Circulated by the Minister for
Transport and Construction, the Hon. Ralph J. Hunt, M.P.)

Outline

The purpose of this Bill and the accompanying Australian National Railways Commission (Transitional Provisions and Consequential Amendments) Bill is to repeal the Australian National Railways Act 1917 and replace it with modern legislation more appropriate to the Commission's role as a commercial business undertaking.

The legislation sets out to:

- define precisely the Commission's powers and responsibilities by giving it a clear and distinct charter
- remove many archaic constraints on ANRC's ability to operate in a commercial manner
- minimise Ministerial intervention in respect of ANRC's day-to-day activities while maintaining Ministerial oversight in critical areas and by way of reserve powers
- ensure ANRC remains accountable to the Government and Parliament for the efficient performance of its functions.

The legislation is in line with the Government's policy that the transport business undertakings should operate in a commercial manner. The changes were decided in a lengthy review process following the Review of Commonwealth Functions announcement of the Government's intention to "deregulate" the Commission. They are in line with the theme of the House of Representatives Expenditure Committee report on ANRC which recommended that "AN(RC)'s commercial objective must predominate and therefore the scale and range of operations of AN(RC) should be determined by customer preferences for its services subject only to explicit government directives in the form of public service obligations (PSO's) including the obligations embodied in the Transfer Agreements".

PART I - PRELIMINARY

Clause 1 - Short Title

This Act may be cited as the Australian National Railways Commission Act 1982.

Clause 2 - Commencement

The Act comes into effect on a date to be proclaimed to give time to re enact necessary subsidiary legislation (by-laws and regulations) and remake appropriate delegations.

Clause 3 - Interpretation

This clause contains the definitions of words used in the Bill.

Most are self explanatory or are retained from the previous Act. Some definitions in the previous Act have been deleted as they were considered unnecessary.

PART II - FUNCTIONS, POWERS AND DUTIES OF THE COMMISSION

Clause 4 - Australian National Railways Commission

This clause continues the Commission, established under the previous Act, in existence.

Clause 5 - Functions of Commission

The clause sets out the functions of the Commission as a comprehensive statement. The previous legislation did not contain such a statement.

Under this clause the primary function of the Commission is the provision of railway services in accordance with the Commonwealth's powers over railways as set out in the Constitution. The Commission also has the function to provide "consultancy services", technical, engineering and other services for the Commonwealth and authorities of the Commonwealth both in Australia, and with the approval of the Minister, overseas. The Commission is also able to provide consultancy services to other persons by the use of resources not immediately required by the Commission for the performance of any of its other functions.

Clause 6 - General Powers of Commission

This clause sets out in the normal form both the specific and general powers of the Commission to do all things necessary or convenient to be done in connection with or incidental to the performance of its functions.

Clause 7 - Certain Contracts not to be entered into without Approval of Minister

The Commission is not to enter into a contract, not being a contract for the carriage of passengers or goods, involving the payment or receipt of an amount exceeding \$2,000,000. The previous limit of the Commission's discretion was prescribed by regulation as \$500,000.

The approval of the Minister is also required before the Commission can enter into financial lease arrangements. The Minister's power of approval in this parallels that of the Treasurer in relation to borrowings other than from the Budget to which these transactions can be an alternative.

The Minister may give an approval covering a number of financial lease arrangements of a similar type. This is to avoid the situation of a separate approval being required for each of a number of small day to day contracts.

Clause 8 - Powers of Commission to participate in formation of Companies etc

The Commission may, with the approval of the Minister, enter into a partnership or form a company either in its own right or in association with another person for the better performance of a function of the Commission.

The Minister has power to require the Commission to dispose of shares in a company if he is satisfied that the holding of the shares is no longer conducive to the performance of a function of the Commission or if the company is empowered to do anything that the Commission is not empowered to do.

These clauses are modelled on the current provisions of the Australian Shipping Commission Act.

Clause 9 - Land Transport other than Rail

In association with or incidental to the provision of its railway services, the Commission may carry passengers or goods by transport other than rail. This clause is reproduced from the previous Act.

Clause 10 - Joint Services

The Commission may make arrangements with other persons under which passengers or goods are carried by the Commission as part of a journey involving travel with the other person. This provision re-enacts a section of the previous Act.

Clause 11 - Conferral of functions and powers on Commission by State and Territory Laws

This clause allows the Commission to exercise functions and powers conferred on it by laws of a State or Territory.

Sub-clause (2) provides for the regulations to limit the extent of powers conferred on the Commission by State or Territory laws.

The previous Act contained a similar provision.

Clause 12 - Power to connect with railways operated by other persons

This clause allows the Commission to connect its railways to those operated by other persons, to run its trains over railways operated by other persons and to permit other persons to run trains over the railways of the Commission.

The equivalent section in the previous Act referred only to State railways. The clause as now drafted allows for the Commission to also connect and make arrangements with privately owned railway operations.

Clause 13 - Sale and Supply of Travellers' Requisites

The purpose of this clause is to allow the Commission to provide meals, refreshments etc. to travellers on passenger trains or at stations outside hours set down in State or Territory legislation. The Commission is required by sub-clause (4) to ensure, as far as possible, that refreshments and goods are not supplied to persons attempting to obtain those goods outside State trading hours.

A similar provision existed in the Previous Act.

Clause 14 - Construction of Railways

Under this clause the Commission will have the power to construct minor new railway lines and connections not exceeding 25 kilometres in length without requiring the construction to be authorised by an Act of Parliament. Previously an Act of Parliament was required for all new railways irrespective of length.

Where an Act is required to authorise construction of a railway over 25 km long it is required to contain a detailed description of the route of the railway, the limit of deviation and the estimated cost of the railway.

Sub-clause (3) allows the Commission, with the approval of the Governor-General, to construct a railway over land set aside as a public park or for public recreation. The Commission also has the power to construct a railway over or under any road. Similar provisions were included in the previous Act.

Sub-clause (4) provides that where a railway is being constructed over a public park or road the Commission also has power to construct bridges and other structures and to install equipment connected with the railway on such land.

Sub-clause (5) requires the Commission to give reasonable notice before exercising its powers over public parks or roads. Clause 72 of this Bill contains provisions relating to serving of notice.

Clause 15 - Power to enter land etc

This clause, modelled on similar provisions in the Pipelines Authority and Telecommunications Acts, gives the Commission power to enter onto any land for the purposes of ascertaining the suitability of the land for the purposes of the Commission. The Commission also has power to enter land adjacent to land that may be suitable for the purposes of the Commission in order to better assess the suitability of that land.

In ascertaining the suitability of land for its purposes the Commission may make surveys, take levels, sink bores, take samples etc.

Similar powers were available to the Commission under the previous Act.

Under sub-clauses (2) and (3), before the Commission exercises its powers under this clause, it shall give notice to the owner and occupier of the land of its intention to do so and shall specify the purpose for which it intends to enter the land.

Clause 16 - Powers relating to construction etc of Railways

This clause, also similar to those in the Pipelines Authority and Telecommunications Acts, sets out the powers the Commission may exercise in constructing, maintaining, altering or repairing the railways. These powers are similar to those included in the previous Act.

Before exercising any of these powers the Commission shall give notice to the owner and occupier of the land of the purpose for which the Commission intends to exercise its powers under this clause.

Sub-clause (4) requires the Commission to notify the authority responsible for any road, electricity cable, water or gas, main or sewerage pipes before exercising any of its powers in relation to a road, cable, pipe etc.

Clause 17 - Commission to take steps to do as little damage as practicable

Sub-clause (1) imposes on the Commission a duty to do as little damage as possible when exercising its powers to enter land and construct and maintain railways. Similar requirements applied in the previous Act.

Sub-clause (2) makes the Commission liable to pay compensation to any owner or occupier of land who suffers loss or damage as a result of the Commission exercising any of these powers.

Under sub-clause (3) compensation will be payable for damage of a temporary as well as permanent nature and also for the taking of any sand, clay, stone, water etc.

Sub-clause (4) contains further definitions for the purposes of this clause.

Clause 18 - General duties of Commission

This clause sets out the general duties of the Commission. It is to operate its services safely and efficiently and, subject to directions given by the Minister and its duty to pursue policies to achieve its financial target, in a manner that accords with sound commercial practice.

Clause 19 - Directions to Commission

This clause enables the Minister to give directions to the Commission to undertake "non-commercial" actions.

Sub-clause (1) states that except as provided for in this clause, the Commission cannot be directed by or on behalf of the Commonwealth.

Sub-clause (2) provides that the Minister may, if he is satisfied that it is desirable in the public interest to do so, give directions to the Commission. The Minister is required, under sub-clause (4), to table a statement setting out the particulars of and reasons for, the direction, in Parliament within 7 sitting days.

The Commission is required to comply with any directions given by the Minister under this clause.

Under the previous legislation there was a provision empowering the Minister to direct the Commission, subject to the Commission being reimbursed the loss occasioned by compliance with the direction. This clause and clause 20 redraft that previous section to resolve some legal interpretation problems.

Clause 20 - Reimbursement of cost of complying with directions

This clause states that were the Commission satisfies the Minister that it has suffered financial detriment as a result of complying with a direction under Clause 19 it is entitled to be reimbursed by the Commonwealth the amount the Minister determines to be the amount of financial detriment.

Sub-clause (2) defines financial detriment as any extra costs incurred or any revenue the Commission has foregone or loss incurred in complying with the direction.

Clause 21 - Charges for Services

This clause provides that, subject to its duties under the Act, the Commission may fix rates of charges for its services.

Sub-clause (2) obliges the Commission to prepare a statement setting out the bases on which it proposes to fix its rates of charges and furnish a copy to the Minister.

Under sub-clause (3) the Minister may within 60 days approve the proposed basis or determine an alternative. The Commission is then required to fix charges in accordance with the basis.

Under sub-clause (5) if the Commission wishes to alter a basis for charging it must notify the Minister of the proposed alteration and shall not fix charges in accordance with the alteration until 60 days have

elapsed since notice was given to the Minister unless the Minister has otherwise approved during that period. The Minister has power under clause 19 of the Bill to direct the Commission not to alter the basis in the manner proposed or to substitute another basis.

The previous Act provided for a three tier system of charges - book rates, special rates and contract rates. Book rates required prior Ministerial approval.

Clause 22 - Corporate Objectives etc

The Commission is to be required to develop corporate objectives, strategies and policies for the purpose of ensuring that it fulfils its duties under the Act on a long term basis.

The Minister is to be kept informed of the results of its corporate planning.

The Commission is to have regard to its corporate planning in performing its functions and exercising its powers.

Clause 23 - Delegation

This is a standard provision allowing the Commission to delegate its powers to any other person.

A power to delegate includes a power to revoke a delegation.

PART III - CONSTITUTION AND MEETINGS OF THE COMMISSION

Clause 24 - Constitution of Commission

The Commission is to consist, as previously, of seven Commissioners. The Chairman will be able to be appointed on either a full time or part time basis as distinct from the previous Act which only allowed for a full time Chairman.

A Deputy Chairman of the Commission will also be able to be appointed to bring ANRC into line with other major authorities such as TAA, Telecom and Australia Post.

The Deputy Chairman and the other Commissioners are appointed on a part time basis.

This clause also restricts the General Manager from holding the office of Chairman of the Commission, although he is not prevented from being the Deputy Chairman or a Commissioner. This provision is aimed at separating the policy function from the executive function and parallels long standing arrangements in the Australian Shipping Commission Act.

Clause 25 - Period of Appointment of Commissioners

Commissioners are, as at present, to be appointed for up to five years and are available for reappointment.

The restriction that persons cannot be appointed for a period extending past their 65th birthday has been removed for Commissioners and for a Chairman appointed on a part time basis.

Clause 26 - Remuneration and allowances of Commissioners

The remuneration of the Chairman, Deputy Chairman and Commissioners is to be determined by the Remuneration Tribunal.

Clause 27 - Leave of Absence

The Minister may grant leave of absence to a Commissioner. Previously the Minister was able to grant leave of absence only to the Chairman.

Clause 28 - Resignation

A Commissioner may resign by giving notice in writing to the Governor-General.

Clause 29 - Acting Chairman

The Minister may appoint the Deputy Chairman, a Commissioner or another person to act as Chairman during a vacancy in the office or when the Chairman is absent or unable to perform the duties of his office. The Minister may determine the terms and conditions of the appointment.

The General Manager is not to be appointed to act as the Chairman. This is consistent with the provision in clause 25 that the General Manager cannot be appointed as the Chairman.

Clause 30 - Acting Deputy Chairman

The Minister may appoint a Commissioner or another person to act as Deputy Chairman during a vacancy in the office or when the Deputy Chairman is absent or unable to perform his duties.

Clause 31 - Acting Commissioner

The Minister may, as previously, appoint any person to act as a Commissioner during a vacancy in the office or when a Commissioner is acting as Chairman or Deputy Chairman or is unable to perform his duties.

Clause 32 - Termination of Appointment

The Governor-General may terminate the appointment of a Commissioner for reasons of misbehaviour or physical or mental incapacity or for other specified reasons including a failure to comply with his obligations under Clause 33.

Clause 33 - Disclosure of Interests

This clause requires a Commissioner who has a direct or indirect pecuniary interest in a matter being considered by the Commission to disclose the nature of that interest.

The Commissioner is then prevented from being present during deliberation or taking part in any decision on the matter unless the Minister or the remainder of the Commission determine otherwise.

These procedures are in line with those recommended by the Inquiry on Public Duty and Private Interest.

Clause 34 - Meetings of Commission

This clause sets out the basic framework for the holding of meetings by the Commission.

The quorum of the Commission is four Commissioners.

PART IV - THE STAFF OF THE COMMISSION

Division 1 - General Manager

Clause 35 - Appointment of General Manager

The Commission shall appoint a person to be the General Manager who is the chief executive officer of the Commission. The appointment is no longer subject to approval by the Minister.

Clause 36 - Remuneration and allowances of General Manager

The clause formally states that the remuneration and allowances of the General Manager are determined by the Remuneration Tribunal.

Until recently the salary of the General Manager was determined by the Commission with the approval of the Minister.

Division 2 - The Railway Service

Clause 37 - The Railway Service

This clause continues the Railway Service established under the previous Act.

The Commission may appoint officers and engage employees as it considers necessary.

Clause 38 - Terms and conditions of employment

The Commission may determine the terms and conditions of employment of its employees.

Under the previous Act the terms and conditions of employment were subject to approval by the Public Service Board.

Other sub-clauses in this clause provide that a certificate signed by the General Manager, concerning the terms and conditions shall be prima facie evidence of the matters stated in the certificate.

The requirement for Ministerial approval of senior positions (defined by regulations as above Class 11 or Engineer 4 in the Public Service) has been removed.

Clauses 39 and 40 - Promotions Appeal Boards

Clauses 39 and 40 continue the previous sections relating to Promotions Appeal Boards.

The clauses set up Boards to hear appeals against promotions or directions to temporarily perform the duties of a higher position. The Commission is bound by decisions of the Boards.

The by-laws at present contain the machinery provisions relating to these Boards and these will be re-made following proclamation of the new Act.

Clauses 41, 42 and 43 - Disciplinary Appeal Boards

These clauses also re-enact provisions of the previous Act regarding appeals against disciplinary decisions made by the Commission.

The by-laws and regulations contain machinery provisions in regard to the Disciplinary Appeal Boards. These will be re-made when the new Act comes into operation.

Clause 44 - Long Service Leave Entitlements of Employees to Whom By-Law 70 was Applicable

This clause re-enacts a section of the previous Act which had the effect of retaining the superior long service leave conditions applying to some long serving former Commonwealth Railway employees.

Division 3 - Special Provisions relating to
Transferred South Australian and Tasmanian Employees

Clause 45 - Superannuation

This clause continues the previous provisions which provided for transferred employees to elect to remain as contributors to the various State superannuation schemes or to become contributors to the Commonwealth scheme.

The former sub-section 51(1) limiting the provision of superannuation benefits by the Commission has not been repeated in the new legislation, being covered by Section 167A of the Superannuation Act 1976. Under that provision, the Commission may offer alternative superannuation schemes to its staff subject to the Minister for Finance's concurrence.

Clause 46 - Long Service Leave Entitlements of Transferred South Australian Employees

The previous sections relating to long service leave for transferred employees are re-enacted by this clause. Such employees are entitled to elect to avail themselves of long service leave under the Long Service Leave (Commonwealth Employees) Act or the conditions which applied in the South Australian Public Service when the employees were transferred.

Clauses 47 and 48 - Compensation payable to certain transferred South Australian Employees

This clause repeats the previous provision which gives transferred South Australian employees a continuing option to seek workers compensation under either the South Australian or Commonwealth legislation as it applies at the date of injury.

Division 4 - Powers and Functions of the
Australian Conciliation and Arbitration Commission
in respect of the Railway Service

Clauses 49 to 53

These clauses repeat the previous provisions allowing the Australian Conciliation and Arbitration Commission to deal with industrial questions in respect of the railway service.

The previous Section 54F allowing for the Commission to be represented in arbitration matters by an officer of the Public Service has been repealed.

PART V - FINANCE

Clause 54 - Capital of the Commission

This clause essentially repeats the previous provisions.

The Minister for Finance is to determine a value for any assets, rights or property vested in the Commission by the Commonwealth and is to determine how much of that value is to form part of the capital of the Commission. If part of the value of assets is determined not to be capital of the Commission it is deemed to be a loan from the Commonwealth on such terms and conditions as determined by the Minister for Finance.

Clause 55 - Financial Policy

The intention of this clause is to make the Commission more responsible for its own financial policy.

Under sub-clause (1) the Commission is to determine, not later than 1 May each year, a financial target for the next financial year and inform the Minister of that target.

Under sub-clause (2) the Minister may, within 60 days, determine a different financial target for the Commission and advise of the reasons for the determination.

Sub-clause (3) makes it a duty of the Commission to pursue policies directed at ensuring that it attains its financial target.

Sub-clause (4) requires the Commission to review the financial results of its operations and if on any review it appears that its progress towards attaining its financial target is not satisfactory, the Commission is to consider what measures should be taken to meet its target. The Commission is to inform the Minister of the measures it proposes and the effect they will have on the financial results of its operations.

Sub-clause (5) requires the Commission to undertake these reviews at six monthly intervals.

Clause 56 - Payment of Dividend to Commonwealth

The clause allows the Commission to determine either that it will pay a dividend of a specific amount to the Commonwealth or that it will not pay a dividend for a financial year.

The Minister has the power to approve the determination or determine a different dividend.

The Commission shall pay any dividend determined or approved before the expiration of 8 months from the end of the financial year.

The dividend payment to the Commission may be made out of profits in that financial year, profits from any preceding financial year or partly out of both.

Clause 57 - Profits of Commission

Sub-clause (1) defines profits as the amount (if any) remaining after deducting from revenue received the expenditure properly chargeable against that revenue.

Sub-clause (2) requires the Commission to apply profits first in the payment of any dividend payable to the Commonwealth and allows the Commission rather than the Minister as stated in the previous Act, to determine the application of any balance.

Clause 58 - Estimates

This clause repeats the standard estimates provision for statutory authorities.

The Commission is required to prepare and submit to the Minister estimates of its receipts and expenditure in such form as the Minister decides.

Clause 59 - Application of Moneys

This clause sets out what payments and investments the Commission is authorized to make.

Moneys of the Commission may only be applied in payment of expenses incurred in the performance of its functions, payment of wages and salaries, making payments to the Commonwealth and making investments authorized by Section 63E of the Audit Act.

That Section of the Audit Act authorizes investment on deposit in an approved bank, in Commonwealth securities or in any other manner approved by the Treasurer. A similar provision was to be found in the previous Act.

Clause 60 - Borrowings from Commonwealth

This clause repeats the previous provision empowering the Minister for Finance to lend moneys appropriated by the Parliament for that purpose to the Commission on such terms and conditions as he determines.

Clause 61 - Borrowings otherwise than from Commonwealth

This clause is a redrafting of the equivalent provisions which were included in the previous Act in 1980 to allow the Commission to borrow by way of dealing with securities. In addition, it clarifies the Commission's powers in respect of trade credit arrangements.

Sub-clause (1) allows the Commission, with the approval of the Treasurer, to borrow moneys otherwise than from the Commonwealth or to raise moneys otherwise than by borrowing, on terms and conditions specified in the Treasurer's approval.

Sub-clause (6) contains definitions of what is covered by the term "raising of moneys otherwise than by borrowing". The term covers trade credit transactions where no money is actually borrowed yet the Commission would get the benefit of credit otherwise than in the ordinary course of its day to day operations.

Sub-clause (2) makes it clear that the Commission may borrow or raise moneys otherwise than by borrowing, by dealing with securities.

Such borrowings may be made in a currency other than Australian.

The Treasurer may, under sub-clause (4), give his approval either in respect of an individual borrowing or in respect of a class of borrowings of similar types.

Clause 62 - Guarantees

This clause makes provision for the Treasurer to make a contract guaranteeing the repayment by the Commission of moneys borrowed and interest payable under the previous clause. The Treasurer may also, under sub-clause (2), determine that moneys borrowed by the Commission and interest on that money are guaranteed.

Sub-clause (4) provides that the contract of guarantee made under sub-clause (1) may provide that proceedings under the guarantee may be taken in the courts of countries other than Australia. The sub-clause also allows the immunity of the Commonwealth to be waived in foreign courts in proceedings taken under a contract guarantee.

Clause 63 - Commission may give Security

The Commission may give security over its assets for repayment of moneys borrowed and interest payable, for repayment of moneys raised otherwise than by borrowing and for any amounts that the Commonwealth may become liable to pay under a contract of guarantee.

Clause 64 - Borrowings not otherwise permitted

The clause prevents the Commission borrowing or raising moneys otherwise than in accordance with clauses 60 and 61.

Clause 65 - Application of Division 2 of Part XI of Audit Act

The clause incorporates several standard provisions of the Audit Act relating to the financial affairs of commercial statutory authorities into this legislation. The sections of the Audit Act relate to bank accounts, investment of moneys, requiring the Commission to keep proper accounts, audit and annual reports and financial statements.

These sections are essentially identical to the relevant provisions in the previous Act. They are included to ensure that all statutory authorities have the same legislation in these areas and to allow for any necessary updating to be done simply and uniformly.

Sub-clauses (3) and (4) require the Commission to include particulars of directions given to the Commission under sub-clauses 8(5) or 19(2) and matters relating to its financial target in its Annual Report and to show separately the financial effects of any directions in the financial statements.

Clause 66 - Liability to Taxation

This clause repeats the provision in the previous legislation which exempts the Commission from taxation under the laws of the Commonwealth or a State or Territory.

Sub-clause (2) empowers the Treasurer to determine, by notice published in the Gazette, that stamp duty is not payable by the Commission or any other person in relation to a dealing in securities by the Commission.

Regulations may be made under sub-clause (4) providing that the exemption from taxation in sub-clause (1) does not apply in relation to a specified law of the Commonwealth, State or Territory.

PART VI - MISCELLANEOUS

Clause 67 - Closing of Railways

This clause gives the Minister power to authorise the Commission to close any railway operated by the Commission. A copy of each authorisation is to be published in the Gazette. Previously railways could be closed only with the approval of the Governor-General.

The closing of railways is subject to the provisions of the transfer agreements made with South Australia and Tasmania.

Clause 68 - Reports of Accidents etc to be supplied to Minister

Sub-clause (1) requires the Commission to inform the Minister forthwith of any accident occurring on railways operated by the Commission resulting in loss of human life or injury to any person, involving a train carrying passengers, or any other serious incident. These requirements are similar to those in the previous Act.

Sub-clause (2) requires the Commission to furnish to the Minister, every 6 months, a report on all accidents occurring in that 6 months on railways operated by it.

These provisions are designed to protect the public interest by ensuring visible Ministerial oversight of safety matters, railways being historically self regulated in this regard.

Clause 69 - Inquiries into accidents etc

Under sub-clause (1) the Minister may establish a Board of Inquiry into any accident resulting in loss of human life, serious injury, involving a train carrying passengers or any other serious accident.

The Royal Commissions Act 1902 is to apply, with such modifications as prescribed, to a Board of Inquiry set up under this clause.

Clause 70 - Reports to Minister

This is a general information provision requiring the Commission to inform the Minister of the general conduct of its operations and to furnish to the Minister such information as he requires and is common to all statutory authorities.

Clause 71 - Commission not a common carrier

This clause provides that the Commission is not a common carrier removing the out of date requirement which formerly applied. Similar action has recently been undertaken in respect of Government railways in Victoria and Western Australia.

Clause 72 - Service of Notices

Sub-clause (1) provides that a notice required to be served under this Act is to be served either personally or by post.

Sub-clauses (3), (4) and (5) cover situations where service by post cannot be effected and are standard provisions in this respect.

Sub-clause (3) provides that where the identity of the owner of land cannot be ascertained service may be effected by publishing the notice in a newspaper circulating in the district and leaving a copy with the occupier of the land. If the land is not occupied a copy of the notice is to be affixed to a conspicuous part of the land.

Sub-clause (4) allows the Commission to treat land as unoccupied if after diligent inquiry it is unable to ascertain whether land is occupied or the identity of the occupier.

Notice to an occupier, where service can not be effected either personally or by post, may be given by publishing in a newspaper and affixing to a conspicuous place on the land under sub-clause (5).

Clause 73 - Railways need not be fenced

The Commission is not required to fence any railway operated by it. A similar provision existed in the previous Act.

Clause 74 - Act subject to Railways Agreement Acts

This provision has the effect of retaining the primacy of the transfer agreements with South Australia and Tasmania over this legislation.

Clause 75 - Closing of Roads

This clause replaces and updates provisions in the previous Act by allowing the Commission, subject to any decisions of the Administrative Appeals Tribunal in the case of objections, to close roads over railways. Previously appeals were to be heard by the Minister and the Governor-General closed the road.

Clause 76 - Compensation for Acquisition of Property

This clause has been added to ensure that the Commission complies with the Constitutional requirement to acquire property on just terms.

Sub-clause (1) provides that if the Commission, in constructing a railway or closing a road, acquires property from any person otherwise than on just terms, the Commission is liable to pay such person compensation.

Sub-clause (2) gives State and Territory Supreme Courts jurisdiction to determine compensation for the purposes of sub-clause (1).

Sub-clause (3) provides definitions for the purposes of this clause.

Clause 77 - Endangering Safety of Trains

This clause is intended to create the offence of endangering the safety of trains or the railways.

Sub-clause (1) creates the offence and provides for a penalty of a fine up to \$20,000 or up to 10 years imprisonment or both.

Sub-clause (3) enables proceedings in respect of such an offence to be dealt with in a court of summary jurisdiction with the consent of the defendant and prosecutor.

Where an offence is dealt with summarily, under sub-clause (4) the Court may impose a penalty of a fine not exceeding \$2,000 or imprisonment for up to 12 months or both.

Under sub-clause (5), this clause has effect in addition to any Commonwealth, State or Territory laws.

Clause 78 - By-laws

This clause retains the Commission's power to make by-laws not inconsistent with this Act or the regulations governing terms and conditions for provision of services, protection of property, maintenance of safety, sale or disposal of unclaimed goods and prohibition of interference with services or property of the Commission.

The by-laws may prescribe a penalty of a fine not exceeding \$500. The previous penalty level of \$100 or 14 days imprisonment limited the effectiveness of this form of subsidiary legislation which is necessary for offences specific to railways.

Sub-clauses (2), (3) and (4) provide that the by-laws are to be treated in the same way as regulations ie. to be laid before each House of Parliament to be subject to disallowance and that a notice of the by-law and place where copies can be obtained is to be published in the Gazette.

Clause 79 - Regulations

This clause gives the Governor-General powers to make regulations under this Act. The regulations may prescribe a penalty of a fine not exceeding \$500.

