

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**AUSTRALIAN NATIONAL RAILWAYS COMMISSION  
AMENDMENT BILL 1988**

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CONSEQUENTIAL AND MINOR AMENDMENTS

1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 19 October 1988

*(Minister for Transport and Communications)*

**A BILL**

FOR

**An Act to amend the *Australian National Railways  
Commission Act 1983***

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**Short title etc.**

5     **1.** (1) This Act may be cited as the *Australian National Railways  
Commission Amendment Act 1988*.

**(2)** In this Act, "Principal Act" means the *Australian National  
Railways Commission Act 1983*<sup>1</sup>.

**Commencement**

10     **2.** This Act commences on the day on which it receives the Royal  
Assent.

2	<i>Australian National Railways Commission Amendment No. , 1988</i>	
	<b>Repeal of section 7</b>	
	3. Section 7 of the Principal Act is repealed.	
	<b>Transport otherwise than by rail</b>	
	4. Section 9 of the Principal Act is amended by omitting from subsection (1) "by land".	5
	<b>Corporate objectives etc.</b>	
	5. Section 22 of the Principal Act is amended by adding at the end the following subsection:	
	"(6) If the Commission forms the opinion that matters have arisen that may prevent, or significantly affect, the achievement of the objectives, strategies and policies developed by it under subsection (1), the Commission shall immediately inform the Minister, in writing, of its opinion and the reasons for the opinion."	10
	<b>Constitution of Commission</b>	
	6. Section 24 of the Principal Act is amended:	15
	(a) by omitting from paragraph (1) (b) "and";	
	(b) by omitting paragraph (1) (c) and substituting the following paragraphs:	
	"(c) the Managing Director; and	
	(d) 4 other Commissioners;"	20
	(c) by inserting in subsection (2) "(other than the Managing Director)" after "Commissioners";	
	(d) by omitting subsection (3);	
	(e) by inserting in subsection (5) "and the Managing Director" after "Chairman";	25
	(f) by inserting in subsection (6) "(other than the Managing Director)" after "Commissioners".	
	<b>Termination of appointment</b>	
	7. Section 32 of the Principal Act is amended by adding at the end the following subsections:	30
	"(3) Where:	
	(a) the Minister is of the opinion that the performance of the Commission has been unsatisfactory for a significant period of time; and	
	(b) the Minister proposes that the appointment of all Commissioners or specified Commissioners be terminated;	35
	the Governor-General shall terminate the appointment of all Commissioners or the specified Commissioners, as the case may be.	

“(4) Where:

(a) the Minister is of the opinion that the performance of a particular Commissioner has been unsatisfactory for a significant period of time; and

5 (b) the Minister proposes that the appointment of the Commissioner be terminated;

the Governor-General shall terminate the appointment of the Commissioner.”.

10 8. After section 34 of the Principal Act the following section is inserted in Part III:

**Application of Part in relation to Managing Director**

“34A. Sections 25 to 28 (inclusive) and 32 do not apply in relation to the Managing Director.”.

15 9. Division 1 of Part IV of the Principal Act is repealed and the following Division is substituted:

***“Division 1—Managing Director***

**Managing Director**

“35. There shall be a Managing Director of the Commission.

**Duties**

20 “36. (1) The Managing Director shall be the chief executive officer of the Commission.

“(2) The Managing Director shall act in accordance with any policies determined by, and any directions given by, the Commission.

25 “(3) All acts and things done in the name of, or on behalf of, the Commission by the Managing Director shall be taken to have been done by the Commission.

**Appointment**

“36A. (1) The Managing Director shall be appointed by the Minister after the Minister has received a recommendation from the Commission.

30 “(2) The Minister shall not appoint the Chairman, the Deputy Chairman, or a Commissioner referred to in paragraph 24 (1) (d), as Managing Director.

“(3) The appointment of a person as Managing Director is not invalid merely because of a defect or irregularity in relation to the appointment.

**Managing Director to hold office during Commission’s pleasure etc.**

35 “36B. The Managing Director:

(a) shall be appointed with effect from the day specified in the instrument of appointment; and

(b) holds office during the Commission’s pleasure.

### **Managing Director holds office on full time basis**

“36C. The Managing Director holds office on a full time basis.

### **Terms and conditions of appointment not provided for by Act**

“36D. The Managing Director holds office on such terms and conditions (including terms and conditions relating to remuneration and allowances) in relation to matters not provided for by this Act as are determined by the Commission.

5

### **Disclosure of interests**

“36E. The Managing Director shall give written notice to the Chairman of all direct and indirect pecuniary interests that the Managing Director has or acquires in any business or in any body corporate carrying on a business.

10

### **Acting Managing Director**

“36F. (1) The Minister may appoint a Commissioner or another person to act as Managing Director during a vacancy in the office of Managing Director (whether or not an appointment has previously been made to the office).

15

“(2) The Commission may appoint a Commissioner or another person to act as Managing Director during any period, or during all periods, when the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

20

“(3) Anything done by or in relation to a person purporting to act as Managing Director is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in relation to the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.”.

25

### **Application of money**

10. Section 60 of the Principal Act is amended:

- (a) by inserting after paragraph (b) “and”;
- (b) by omitting from paragraph (c) “and”;
- (c) by omitting paragraph (d);
- (d) by adding at the end the following subsection:

30

“(2) Money of the Commission not immediately required for the purposes of the Commission may be invested in any manner that is consistent with sound commercial practice.”.

35

11. Sections 62 to 66 (inclusive) of the Principal Act are repealed and the following sections are substituted:

**Borrowings otherwise than from Commonwealth**

5 “62. (1) The Commission may borrow money from persons other than the Commonwealth.

“(2) Money may be borrowed wholly or partly in foreign currency.

**Guarantee of borrowings**

10 “63. (1) The Treasurer may, on behalf of the Commonwealth, enter into a contract guaranteeing the performance by the Commission of obligations incurred by it under section 62.

“(2) If the Treasurer determines, in writing, that obligations incurred by the Commission under section 62 are guaranteed by the Commonwealth, the obligations are, by force of this subsection, guaranteed by the Commonwealth.

15 “(3) The Treasurer may, in writing, delegate to the holder of an office in the Department of the Treasury all or any of the Treasurer’s powers under this section.

“(4) A contract under subsection (1) may include:

(a) a provision agreeing that proceedings under the contract may be taken in courts of a foreign country; or

20 (b) a provision waiving the immunity of the Commonwealth from suit in courts of a foreign country.

**Commission may give security**

“64. The Commission may give security over the whole or any part of its assets for:

25 (a) the due performance of obligations incurred by it under section 62; or

(b) the payment to the Commonwealth of amounts equal to any amounts that the Commonwealth may become liable to pay under obligations incurred by the Commonwealth under section 63.

30 **Proper accounts to be kept**

“65. The Commission shall:

(a) keep proper accounts and records of its transactions and affairs in accordance with the accounting principles generally applied in commercial practice; and

35 (b) do all things necessary to ensure:

(i) that all payments by it are correctly made and properly authorised; and

(ii) that adequate control is maintained of:

(A) the assets of, or in the custody of, the Commission; and

40 (B) the incurring of liabilities by the Commission.

### **Appointment of Commission auditor**

“66. (1) The Commission auditor shall be appointed by the Minister after the Minister has received a recommendation from the Commission.

“(2) The Minister shall not appoint a person or firm other than the Auditor-General, or a person or firm carrying on the business of auditing company accounts, as Commission auditor. 5

“(3) The Minister may, at any time, terminate the appointment of a person or firm as Commission auditor.

### **Audit**

“66A. (1) The Commission auditor shall: 10

(a) inspect and audit:

(i) the accounts and records of financial transactions of the Commission; and

(ii) the records relating to assets of, or in the custody of, the Commission; and 15

(b) immediately draw the Minister's attention to any irregularity disclosed by the inspection and audit that, in the Commission auditor's opinion, is of sufficient importance to justify doing so.

“(2) The Commission auditor may dispense with all or part of the detailed inspection and audit of any accounts or records referred to in paragraph (1) (a). 20

“(3) The Commission auditor shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under paragraph (1) (a).

“(4) An authorised auditor is entitled, at all reasonable times, to full and free access to all accounts, records and other documents of the Commission that relate directly or indirectly to: 25

(a) the receipt or payment of money by the Commission; or

(b) the acquisition, receipt, custody or disposal of assets by the Commission. 30

“(5) An authorised auditor may make copies of, or take extracts from, any accounts, records or other documents referred to in subsection (4).

“(6) An authorised auditor may require any person to give such information in the possession of the person, or to which the person has access, as the authorised auditor considers necessary for the purposes of the Commission auditor's functions under this Act. 35

“(7) A person who contravenes a requirement under subsection (6) is guilty of an offence punishable, on conviction, by a fine not exceeding:

(a) if the person is a natural person—\$1,000; or

(b) if the person is a body corporate—\$5,000.”. 40



12. Before section 68 of the Principal Act the following section is inserted in Part VI:

**Annual Report**

5 “67A. (1) The Commission shall, as soon as practicable after the end of each financial year, prepare and give to the Minister a report of its operations during that year, together with financial statements for the year in such form as the Minister for Finance approves in writing.

“(2) The report shall:

10 (a) include particulars of each direction given to the Commission by the Minister under subsection 8 (5) or 19 (2) that is applicable to the year;

(b) deal specifically with the effect on its operations during the year of each such direction under subsection 19 (2);

15 (c) specify the financial target determined by it under subsection 55 (1) for the year;

(d) if the Minister has, under subsection 55 (2), determined a different financial target for the year—specify the financial target determined by the Minister and set out the reasons given to the Commission by the Minister for the determination;

20 (e) include particulars of:

(i) companies that it formed, and companies in whose formation it participated, during the year;

(ii) partnerships that it entered into during the year; and

25 (iii) joint ventures, and arrangements for the sharing of profits, that it entered into during the year; and

(f) include information relating to shares and securities that it subscribed for, purchased or disposed of during the year.

“(3) The financial statements shall:

30 (a) show separately the financial effect on the operations of the Commission of each direction given to it by the Minister under subsection 19 (2) that is applicable to the year; and

35 (b) comply with the requirements prescribed under the *Companies Act 1981* for the accounts of a listed corporation so far as those requirements relate to the income of executive officers of a listed corporation.

“(4) Before submitting the financial statements to the Minister, the Commission shall submit them to the Commission auditor, who shall report to the Minister:

40 (a) whether, in the Commission auditor’s opinion, the statements are based on proper accounts and records;

- (b) whether the statements are in agreement with the accounts and records and, in the Commission auditor's opinion, show fairly the financial transactions and state of affairs of the Commission;
- (c) whether, in the Commission auditor's opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Act; and 5
- (d) as to such other matters arising out of the statements as the Commission auditor considers should be reported to the Minister.

“(5) The Minister shall cause a copy of the report and financial statements, together with a copy of the Commission auditor's report, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister. 10

“(6) For the purposes of paragraph (3) (b):

- (a) the Commission shall be taken to be a listed corporation; and 15
- (b) the Managing Director shall be taken to be an executive officer of the Commission.

“(7) Expressions used in paragraph (3) (b) and subsection (6) and in the *Companies Act 1981* have the same respective meanings as they have in that Act.”. 20

13. After section 78 of the Principal Act the following sections are inserted:

#### **Public Works Committee Act**

“78A. The *Public Works Committee Act 1969* does not apply in relation to the Commission. 25

#### **Lands Acquisition Act**

“78B. (1) The *Lands Acquisition Act 1955* does not apply in relation to the acquisition of land, or an interest in land, by the Commission by agreement.

“(2) In subsection (1): 30

‘interest’, in relation to land, means:

- (a) a legal or equitable estate or interest in the land; or
- (b) a right, power or privilege over, or in relation to, the land.”.

#### **Consequential and minor amendments**

14. The Principal Act is further amended as set out in the Schedule. 35

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**SCHEDULE**

Section 14

**CONSEQUENTIAL AND MINOR AMENDMENTS**

**Subsection 3 (1) (definitions of “acting Chairman”, “acting Commissioner”, “acting Deputy Chairman”, “appoint”, “financial year”, “General Manager” and “securities”):**

Omit the definitions.

**Subsection 3 (1):**

Insert the following definitions:

“ ‘authorised auditor’ means:

(a) the Commission auditor; or

(b) a person authorised, in writing, by the Commission auditor;

‘borrowing’, in relation to the Commission, includes raising money or credit, whether by dealing in securities or otherwise, but does not include raising credit in a transaction forming part of the day to day operations of the Commission;

‘Commissioner’ includes the Chairman, the Deputy Chairman and the Managing Director;

‘Managing Director’ means the Managing Director of the Commission;”.

**Subsection 3 (2):**

Omit the subsection.

**Subsection 23 (1):**

(a) Omit “, either generally or as otherwise provided by the instrument of delegation,”.

(b) Omit “, other than this power of delegation”.

**Subsections 23 (2) and (3):**

Omit the subsections.

**Subsection 29 (2):**

Omit “General Manager”, substitute “Managing Director”.

**Subsections 29 (3) to (8) (inclusive):**

Omit the subsections.

**Subsections 30 (2) to (7) (inclusive):**

Omit the subsections.

**Subsection 31 (1):**

Insert “referred to in paragraph 24 (1) (d)” after “Commissioner” (first occurring).

**SCHEDULE—continued**

**Paragraphs 31 (1) (a) and (b):**

Insert “such” before “a Commissioner”.

**Subsections 31 (2) to (7) (inclusive) and (9):**

Omit the subsections.

**Subsection 33 (4):**

Omit the subsection.

**Subsections 34 (9), (10) and (11):**

Omit the subsections.

**Subsection 38 (3):**

Omit “General Manager”, substitute “Managing Director”.

**Subsection 79 (1):**

Insert “, in writing,” after “The Commission may”.

**Subsections 79 (2), (3) and (4):**

Omit the subsections, substitute the following subsection.

“(2) A by-law made under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

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**NOTE**

1. No. 140, 1983, as amended. For previous amendments, see No. 65, 1985; No. 76, 1986; No. 100, 1987; and Nos. 55 and 75, 1988.