

GOVERNMENT RAILWAYS AMENDMENT (No. 2) BILL

EXPLANATORY NOTE

This Bill amends the Government Railways Act 1949.

Clause 1 relates to the Short Title.

Clause 2 makes the legislative changes necessary to empower the Minister of Railways to employ, on the same conditions as at present, masters, officers, and seamen on the Cook Strait rail ferries (at present being operated on behalf of the New Zealand Government Railways Department by the Union Steamship Company of New Zealand Limited) when the operation of those ferries is assumed by the Department. The remuneration and conditions of employment of those masters, officers, and seamen will continue to be fixed by awards or industrial agreements or agreements under section 8 of the Labour Disputes Investigation Act 1913 as at present.

This clause inserts a new section 13B in the principal Act, providing that the existing power conferred on the Minister of Railways by section 13 of the principal Act to undertake the carriage of passengers and goods by water includes power to employ masters, officers, and seamen and to enter into industrial agreements with any industrial union or association of workers, and to be a party to any conciliation proceedings and be bound by any award or industrial agreement to which any such union or association is a party; and to enter into an agreement under section 8 of the Labour Disputes Investigation Act 1913 with any society of workers employed in connection with the carriage of passengers or goods by water.

Part IV of the principal Act, relating to staff administration (including transfers, promotions, and appeals) and Part IVA, relating to the Government Railways Welfare Society, will not apply to persons (other than employees of the Department employed as pursers) employed under this provision. Their remuneration and conditions of employment will continue to be fixed in the same manner as at present.

The effect of the amendments made by *subclause (2)* is that persons so employed will not come within the definitions of "employee" and "member" for the purposes of the principal Act.

Clause 3 provides for consequential amendments to other Acts. The effect of these amendments is as follows:

- (a) Section 8 of the Labour Disputes Investigation Act 1913 is amended by adding a provision that the Minister of Railways, acting on behalf of the Crown, may be a party to any agreement filed with the Clerk of Awards under that section.

- (b) The effect of the amendment to section 3 (1) of the Shipping and Seamen Act 1952 is that that Act will apply to all rail ferries operated by the New Zealand Government Railways Department. At present, that Act does not apply to Government ships except where otherwise provided.
- (c) Section 154 of the Industrial Conciliation and Arbitration Act 1954 is amended by providing that so long as an industrial agreement or award or an agreement under section 8 of the Labour Disputes Investigation Act 1913 made by the Minister of Railways under section 13B of the principal Act (inserted by *clause 2*) is in force, the Minister will not be bound by any other award binding employers in the industry.
- (d) A new section 218A is inserted in the Industrial Conciliation and Arbitration Act 1954 providing that the maritime unions named in subsection (2) may be parties to any conciliation proceedings affecting workers employed by the Minister of Railways under the new section 13B of the principal Act (inserted by *clause 2*), and may be parties to and bound by any award or industrial agreement affecting such workers, notwithstanding that the Minister of Railways, acting on behalf of the Crown, is the employer of those workers. This provision is necessary because the Industrial Conciliation and Arbitration Act 1954 does not bind the Crown.
- (e) The effect of the amendment to the definition of "State services" in section 2 (1) of the State Services Remuneration and Conditions of Employment Act 1969 is that persons employed under the new section 13B of the principal Act (inserted by *clause 2*) who are employed under an agreement filed with the Clerk of Awards under section 8 of the Labour Disputes Investigation Act 1913 will not be State employees, and their remuneration and conditions of employment will not be fixed under the first-mentioned Act. Persons whose remuneration and conditions of employment are fixed by awards or industrial agreements are already excluded.

Clause 4: Subclause (1) re-enacts in an amended form section 49 of the principal Act which relates to the leasing of railway land, and includes in that section amended provisions as to the leasing of railway buildings, land and buildings for the sale of refreshments, books, and other articles, and structures and part of rolling stock used for advertising purposes, which provisions were formerly contained in sections 52 and 53 of the principal Act.

The changes made by the new section 49 are—

- (a) The new provision makes it clear that air space above, and the subsoil of, railway land may be let on lease, either separately or together with the surface of the land.
- (b) Under the present provisions where, in the case of a lease of land, the annual rental value exceeds \$312, or, in all other cases, the annual rental value of the property exceeds \$104 and the lease is for a term exceeding 2 years, the letting is to be by public tender, public auction, or public application at fixed rentals. The section now provides that a lease may be by private treaty if it is for a term not exceeding 2 years or if the rent is not less than a rent fixed by a valuation made by the Valuer-General. The section also provides that, in the case of land and buildings, a lease may be granted pursuant to a licence issued under the proposed new section 50A of the principal Act.

(c) Under the present provisions no maximum term was fixed for a lease of railway buildings. Under the new provision a maximum term of 21 years, the same as that for railway land, has been fixed.

(d) Subclauses (4), (5), (6), and (7) of the present section which relate to renewals and compensation have not been re-enacted.

Subclause (2) ensures that the power of the Gore Borough Council to sublet leased railway land remains the same as those given under the Gore Borough Empowering Act 1962.

Subclause (3) provides for consequential repeals.

Clause 5 inserts a new section 50A in the principal Act relating to the grant of licences to enter upon railway land for the purpose of making investigations preparatory to formulating a development plan in respect of any railway land or buildings that are or may become available for leasing. The licence may, subject to the fulfilment of the conditions specified therein, be converted into a lease of all or part of such land or buildings.

Clause 6: Section 54 of the principal Act empowers the Minister to enter into any agreement with any person for the use by that person of certain facilities used by the Department and for the use by the Department of certain facilities belonging to that person. At present, whilst the Department can, under any such agreement, use cranes, hoists, weighing and other machines, weights and measures, conveniences, or appliances belonging to any person, there is no power for the Minister to enter into any agreement for the use by any person of similar facilities belonging to the Department. This clause gives the Minister the power to enter into any such agreement in any case where such facilities are not otherwise reasonably available.

Clause 7 amends section 55 of the principal Act which relates to the granting of easements, privileges, and concessions in respect of railway land. At present all such easements, privileges, and concessions are subject to the mandatory requirement that they shall be revoked without compensation at any time when the service of the public requires it and shall also be revoked in the case of the breach of any condition under which they are granted.

This clause provides that in respect of any easements, privileges, or concessions granted under or in connection with any licence under the proposed new section 50A (inserted by *clause 5*), or under or in connection with any lease granted under the terms of any such licence, the Minister may impose such conditions as to revocation as he considers necessary.

Clause 8 amends section 64 of the principal Act, which authorises the Minister of Transport by notice in the *Gazette* to declare an appropriate speed limit at any specified level crossing or any specified part of the approach thereto. The maximum speed limit which may be prescribed is increased from 20 miles an hour to 30 miles an hour.

Hon. Mr Gordon

GOVERNMENT RAILWAYS AMENDMENT (NO. 2)

ANALYSIS

Title		
1. Short Title		5. Development licences may be granted in respect of unused railway land or buildings
2. Carriage of passengers and goods by water		6. Powers of Minister as to use of railways, wharves, etc.
3. Amendments consequential on section 2		7. Grant of easements
4. Unused lands and buildings may be leased		8. Traffic at level crossings Schedule

A BILL INTITULED

An Act to amend the Government Railways Act 1949

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

1. **Short Title**—This Act may be cited as the Government Railways Amendment Act (No. 2) 1971, and shall be read together with and deemed part of the Government Railways Act 1949* (hereinafter referred to as the principal Act).

10 2. **Carriage of passengers and goods by water**—(1) The principal Act is hereby amended by inserting after section 13A (as inserted by section 5 of the Government Railways Amendment Act 1953), the following section:

*1957 Reprint, Vol. 5, p. 693

Amendments: 1959, No. 66; 1961, No. 39; 1962, No. 13; 1962, No. 138; 1963, No. 124; 1964, No. 38; 1967, No. 158; 1968, No. 40

“13B. (1) The powers conferred on the Minister by section 13 of this Act to undertake the carriage by water of passengers and of goods shall include power—

“(a) To employ such masters of ships, officers, and seamen as the Minister considers necessary or expedient for the purpose: 5

“(b) To enter into any industrial agreement under the Industrial Conciliation and Arbitration Act 1954 with any industrial union or association of workers employed in connection with the carriage of passengers or goods by water, and to be a party to any conciliation proceedings under that Act, and to be bound by any award or industrial agreement made under that Act to which any such union or association of workers is a party: 10 15

“(c) To enter into any agreement under section 8 of the Labour Disputes Investigation Act 1913 with any society of workers employed in connection with the carriage of passengers or goods by water.

“(2) For the purposes of this section, the Minister, acting on behalf of the Crown, may, by notice in writing to the Clerk of Awards at Wellington, elect to become a party to and be bound by any specified industrial agreement or award under the Industrial Conciliation and Arbitration Act 1954 or agreement under section 8 of the Labour Disputes Investigation Act 1913 in force at the commencement of this section, subject to such exceptions, amendments, and additions as may be specified in the notice, and thereupon the Minister shall become a party to, and be bound by, that industrial agreement or award or agreement, subject to any such exceptions, amendments, and additions. 20 25 30

“(3) Nothing in Part IV or Part IV_A of this Act shall apply with respect to any master, officer, or seaman who is employed pursuant to this section (not being an employee of the Department who is employed as a purser), or with respect to any application for such employment made by an employee to whom the said Part IV applies. 35

“(4) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 40

“(a) Determining the manner in which and the terms and conditions on which applicants for employment under this section may enter the service of the Department:

“(b) Prescribing the respective duties to be performed by persons employed under this section and the discipline to be observed in the performance of those duties:

5 “(c) Providing how and by whom charges of inefficiency or misconduct may be made against any person employed under this section:

“(d) Prescribing penalties for breaches of the regulations, not exceeding a fine of \$20:

10 “(e) Generally providing for any matters that may be necessary in order to give full effect to this section.

“(5) All persons employed under this section shall in the performance of their duties observe instructions issued from time to time by the General Manager with respect to those
15 duties.

“(6) In this section the terms ‘master’, ‘officer’, and ‘seaman’ have the same meanings as in the Shipping and Seamen Act 1952.”

(2) Section 2 of the principal Act is hereby amended—

20 (a) By adding to the definition of the term “employee” the words “but does not include any master, officer, or seaman (other than an employee of the Department employed as a purser) who is employed pursuant to section 13B of this Act”:

25 (b) By adding to the definition of the term “member” the words “or any master, officer, or seaman (other than an employee of the Department employed as a purser) who is employed pursuant to section 13B of this Act”.

30 **3. Amendments consequential on section 2**—The enactments specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.

4. Unused lands and buildings may be leased—(1) The principal Act is hereby further amended by repealing section
35 49, and substituting the following section:

“49. (1) The Minister may from time to time, in the name and on behalf of Her Majesty, let on lease, upon such conditions and for such term, subject to this section, as he thinks
fit—

40 “(a) Any railway land for sites for storing goods, or for erecting buildings, or for such other purposes as may be approved by him:

“(b) Any railway buildings, workshops, or other erections:

“(c) Any land or buildings (being part of a railway) for the sale of refreshments, books, or other articles:

“(d) The use of structures erected on land (being part of a railway), or of any part of the rolling stock, for the display of advertisements thereon. 5

“(2) For the purposes of paragraph (a) of subsection (1) of this section the expression ‘land’ includes, whether together with or separately from the surface of the land,—

“(a) The whole or any portion of the air space above the land: 10

“(b) The whole or any portion of the subsoil.

“(3) The letting may be by private contract, or by public tender, or by public auction, or by public application at fixed rentals, or pursuant to a licence granted under section 50A of this Act: 15

“Provided that the letting may be by private contract in the following cases only:

“(a) Where the lease is for a term not exceeding 2 years without right of renewal; or 20

“(b) Where the rent payable under the lease is not less than an annual rent fixed by a valuation made by the Valuer-General.

“(4) The lease may be for a term not exceeding 21 years, with or without a right of renewal, perpetual or otherwise, for the same or any shorter term: 25

“Provided that where the lease is in respect of any property to which paragraph (c) or paragraph (d) of subsection (1) of this section applies, the term of the lease shall not exceed 7 years. 30

“(5) Where any lease of land is granted under this section for farming purposes, the Minister, with the concurrence of the County Council, Borough Council, or Town Council within whose district the land is situated, may direct that the lessee shall not be liable for rates in respect of the land. In every such case— 35

“(a) The Minister shall fix the period (not exceeding 7 years) for which the rates shall not be payable so long as the land is used for farming purposes; and 40

“(b) During the period so fixed, the land shall be deemed not to be rateable property for the purposes of the Rating Act 1967 and for the purposes of the Local Authorities Loans Act 1956.”

(2) Notwithstanding anything in subsection (1) of this section, subsection (2) of section 7 of the Gore Borough Empowering Act 1962 shall continue to apply as if that first-mentioned subsection had not been enacted.

5 (3) The following enactments are hereby consequentially repealed:

(a) Sections 51, 52, and 53 of the principal Act:

(b) So much of the Second Schedule to the Government Railways Amendment Act 1956 as relates to section 51 of the principal Act:

10 (c) Section 3 of the Government Railways Amendment Act 1959:

(d) Section 2 of the Government Railways Amendment Act 1967.

15 **5. Development licences may be granted in respect of unused railway land or buildings**—The principal Act is hereby further amended by inserting, after section 50, the following section:

20 “50A. (1) The Minister may from time to time, in the name and on behalf of Her Majesty, grant a licence, upon such conditions and for such term and upon such payment (if any) as he thinks fit, to any person to enter upon railway land and to do all such things as may be specified in the licence, for the purpose of making such investigations as may be necessary in order to prepare a plan for the development for industrial, commercial, residential, or recreational purposes of any railway land or buildings that are or may become available for leasing.

25 (2) Any licence granted to any person under subsection (1) of this section may contain provisions for the grant to that person or his assignee of a lease of all or any part of the land or buildings in respect of which the investigations for development are to be made, upon the fulfilment of such conditions in that behalf as may be specified in the licence.

30 (3) Subsection (1) of section 56 of this Act shall not apply to any right to any easement, or to construct or carry out any work upon, over, or under any railway which is granted under or in connection with any licence granted under subsection (1) of this section, or under or in connection with any lease granted pursuant to any such licence.”

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6. Powers of Minister as to use of railways, wharves, etc.— Section 54 of the principal Act is hereby amended by inserting, after paragraph (d), the following paragraph:

“(dd) For the use by any such person of cranes, hoists, weighing and other machines, weights and measures, conveniences, or appliances used for the purposes of the Department and not otherwise reasonably available:”.

7. Grant of easements—Section 55 of the principal Act is hereby amended by adding the following subsection:

“(3) Notwithstanding anything in subsection (1) or subsection (2) of this section, where any easement, privilege, or concession to which those subsections refer is granted to any person under or in connection with any licence granted under subsection (1) of section 50A of this Act, or under or in connection with any lease granted pursuant to any such licence, the easement, privilege, or right may be subject to such payments of rent and such conditions as the Minister thinks fit, including conditions as to revocation without compensation when the service of the public requires it, and such additional conditions as to revocation as the Minister considers necessary.”

8. Traffic at level crossings—Section 64 of the principal Act (as substituted by section 6 of the Government Railways Amendment Act 1956) is hereby amended by omitting from subsection (2) (as substituted by section 3 of the Government Railways Amendment Act 1967) the words “not exceeding twenty miles an hour”, and substituting the words “not exceeding 30 miles an hour”.

SCHEDULE

ENACTMENTS AMENDED

Enactment	Amendment
1913, No. 75—The Labour Disputes Investigation Act 1913 (1957 Reprint, Vol. 6, p. 839)	By adding to section 8 the following subsection: “(5) The Minister of Railways, acting for and on behalf of the Crown, may be a party to any such agreement with any society to which this Act applies.”
1952, No. 52—The Shipping and Seamen Act 1952 (Reprinted, 1965, Vol. 3, p. 1631)	By repealing paragraph (a) of subsection (1) of section 3, and substituting the following paragraph: “(a) Her Majesty’s ships other than rail ferries operated by the New Zealand Government Railways Department; or”.
1954, No. 72—The Industrial Conciliation and Arbitration Act 1954 (1957 Reprint, Vol. 6, p. 443)	By adding to subsection (2) of section 154 the following paragraph: “(c) Where the Minister of Railways is the employer and an award or industrial agreement or an agreement under the Labour Disputes Investigation Act 1913 is for the time being in force.”
	By inserting, after section 218, the following section: “218A. Government Railways services for carriage by water of passengers or goods—(1) Each of the unions referred to in <u>subsection (2)</u> of this section may be a party to any conciliation proceedings or proceedings before the Court under this Act affecting workers employed by the Minister of Railways pursuant to section 13B of the Government Railways Act 1949 and may be a party to and bound by any award or industrial agreement, notwithstanding that the Minister of Railways, acting on behalf of the Crown, is the employer of any of the workers who are affected by the proceedings or whose employment may be regulated by any such award or industrial agreement. “(2) The unions referred to in <u>subsection (1)</u> of this section are— “(a) The New Zealand Merchant Service Guild Industrial Union of Workers:

SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1954, No. 72—The Industrial Conciliation and Arbitration Act 1954 (1957 Reprint, Vol. 6, p. 443)— <i>continued</i>	<p>“(b) The New Zealand Seamen’s Industrial Union of Workers:</p> <p>“(c) The Federated Cooks’ and Stewards’ Union of New Zealand Industrial Union of Workers:</p> <p>“(d) The New Zealand Chief Stewards’ Industrial Union of Workers.</p> <p>“(3) In the event of the dissolution of any such union, the provisions of this section shall apply with respect to any reconstruction thereof or to any union registered in its stead.”</p> <p>By inserting in section 219, after the words “section two hundred and eighteen”, the words “or section 218A”.</p>
1969, No. 64—The State Services Remuneration and Conditions of Employment Act 1969	<p>By adding to the definition of the expression “State services” in subsection (1) of section 2 the words “or under agreements filed with the Clerk of Awards under section 8 of the Labour Disputes Investigation Act 1913”.</p>