

GOVERNMENT RAILWAYS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Government Railways Act 1949.

Clause 1 relates to the Short Title to the Bill.

Clause 2: Section 23 (e) of the principal Act speaks of the time during which goods may, in accordance with any contract or under any regulation, remain on the premises of the Department. This time is not fixed by regulation, but by terms and conditions imposed by the Minister under section 33 (4) of the principal Act. The clause amends section 23 (e) accordingly. The clause also provides that the Minister may make contracts with any person for the carriage of goods at the owner's risk.

Clause 3: The proviso to subsection (4) of section 33 of the principal Act declares that, while regulations for the checking of luggage are in force, no liability shall be incurred by the Crown in respect of luggage which has not been duly checked. The checking of luggage is governed by terms and conditions stated in a Minister's notice gazetted under the subsection, and not by regulations. *Subclause (1)* of the clause amends the proviso accordingly.

Subclause (2) declares that the Minister's power to impose terms and conditions subject to which goods will be received, held, carried, delivered, or otherwise dealt with shall include power to impose terms and conditions exempting the Crown from liability in a number of specified special cases. The amendment is made retrospective to 31 March 1957 so as to preserve the effect of the Railways General Scale of Charges published in the *Gazette*, 1957, Vol. II, p. 891. The effect of existing judgments is preserved.

Clause 4 repeals certain spent sections relating to the now dissolved Government Railways Employees' Sick Benefit Society and the Sick Benefit Fund.

Clause 5 rewrites section 81 of the principal Act, which relates to the effective date of appointments, so as to bring the section into line with section 32 of the State Services Act 1962.

Clause 6 adds a proviso to subsection (5) of section 91 of the principal Act so as to resolve any doubt as to which elected member shall sit on the Government Railways Appeal Board in appeals involving two branches.

Clause 7 makes provision for the handling of multiple appeals.

Hon. Mr McAlpine

GOVERNMENT RAILWAYS AMENDMENT

ANALYSIS

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1. Short Title	5. Effective date of appointments
2. Custody, carriage, and delivery of goods	6. Government Railways Appeal Board
3. Terms and conditions of carriage	7. Appeals affecting more than one appellant

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 1963, and shall be read together with and deemed part of the Government Railways Act 1949* (hereinafter referred to as the principal Act).

- 10 2. **Custody, carriage, and delivery of goods**—(1) Section 23 of the principal Act is hereby amended—
 (a) By omitting from paragraph (e) the word “regulation” where it first appears, and substituting the words
15 “terms and conditions imposed by the Minister under section 33 of this Act”:

*1957 Reprint, Vol. 5, p. 693

Amendments: 1959, No. 66; 1961, No. 39; 1962, No. 13; 1962, No. 138

(b) By omitting from paragraph (e) the word “regulation” where it appears in the proviso, and substituting the words “such terms and conditions”.

(2) Section 23 of the principal Act is hereby further amended by adding the following paragraph: 5

“(g) The Minister may make contracts with any person for the carriage of goods at the owner’s risk; and any goods to which such a contract applies shall be received, held, carried, delivered, and otherwise dealt with at the sole risk in every respect whatsoever of the owner; and the Crown shall not be liable to make any payments for any loss of or damage to or in connection with any goods, whether in accordance with paragraph (b) of this section or otherwise.” 10 15

3. Terms and conditions of carriage—(1) Section 33 of the principal Act is hereby amended by omitting from the proviso to subsection (4) the words “regulations for the checking of luggage are”, and substituting the words “any such notice imposing terms and conditions relating to the checking of luggage is”. 20

(2) Section 33 of the principal Act is hereby further amended as from the thirty-first day of March, nineteen hundred and fifty-seven, by inserting, after subsection (5), the following subsection: 25

“(5A) Without restricting the generality of subsection (5) of this section and notwithstanding anything to the contrary in section 23 of this Act, it is hereby declared that any terms and conditions imposed under subsection (4) of this section may include— 30

“(a) Terms and conditions exempting the Crown from liability for any loss, damage, or expense, whether due to delays in transit or any other cause, where the loss or damage or expense—

“(i) Is not occasioned by the negligence or wrongful act of the Department or its employees or agents; or 35

“(ii) In the case of goods, arises from the negligence of the consignor or his employees or agents:

“(b) Terms and conditions giving the Crown the right to recover from consignors the cost of damage to Departmental property or other goods where the damage or loss is caused by the inherent defect, quality, or vice of the goods causing the damage: 40

“(c) Terms and conditions exempting the Crown from liability—

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“(i) Where goods are loaded, unloaded, secured, covered, or tallied at any place by persons other than employees of the Department; or

“(ii) In respect of goods held or stored by the Department as a warehouseman; or

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“(iii) In respect of loss of or of damage or delay to goods while in the possession, custody, or control of any carrier other than the Department, or of any Harbour Board, warehouseman, or other person during transit; or

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“(iv) In respect of goods consigned to or forwarded from a station where there is no station-master.”

(3) The rights of the parties under any judgment given in any Court before the passing of this Act, or under any judgment given on appeal from any such judgment, whether the appeal is commenced before or after the passing of this Act, shall be determined as if subsection (2) of this section had not been passed.

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4. Repeals—The following enactments are hereby repealed:

(a) Sections 44 and 44A of the principal Act:

(b) Section 2 of the Government Railways Amendment Act 1957.

5. Effective date of appointments—The principal Act is hereby amended by repealing section 81, and substituting the following section:

30 “81. (1) The power to appoint any person to any position in the Department shall be deemed to include the power to appoint that person from and including a date to be specified by the appropriate appointing authority, which date may be earlier or later than the date on which the power of appointment is exercised, and salary shall be payable from
35 and including such date (not being earlier than the date so specified) as the General Manager may determine.

40 “(2) The provisions of subsection (1) of this section shall apply, notwithstanding that any other person previously appointed to the position may on the specified date and for any time thereafter continue to hold and receive the salary for that position though (by reason of absence or other circumstance) not actually performing the duties thereof, or if the

appointing authority is of opinion that a new appointee should be given a period of time in which to make himself familiar with the duties of the position before its vacation by the other occupant."

6. Government Railways Appeal Board—Section 91 of the principal Act is hereby amended by adding to subsection (5) the following additional proviso:

"Provided also that, where an employee transfers from the Salaried Division to the General Division or from the General Division to the Salaried Division or from one branch of the General Division to another branch of that Division after lodging an appeal but before that appeal is heard, the Chairman shall determine which of the elected members shall act as a member of the Appeal Board in respect of that appeal."

7. Appeals affecting more than one appellant—Section 97 of the principal Act is hereby amended by adding the following subsection:

"(5) Appeals affecting more than one appellant shall not be heard together unless the Appeal Board so decides. In any such case all appeals shall be heard before a decision is given, and if the Appeal Board does not confirm the decision appealed against it shall allow one appeal and disallow the others."