

Railways (Amendment) Bill 1979

EXPLANATORY MEMORANDUM

Clause 1: Short Title and Commencement. The Principal Act to be amended is the *Railways Act 1958*.

Clause 2 amends section 13 of the Principal Act to clarify the railways existing powers to arrest an offender against the Act or by-laws and to place the offender in charge of a member of the police force.

Clause 3 inserts a new section 13A in the Principal Act to make the hindrance of railways officers in the execution of their duty an offence subject to a penalty of \$300 or imprisonment for two months.

Clause 4 substitutes in the Principal Act a new section 31 dealing with the penalty for evasion of fare.

Sub-section 31 (1) specifies the circumstances under which a passenger may travel without a valid ticket.

Sub-sections 31 (2) and (3) impose a penalty of not more than \$100 upon a person who travels without a ticket when he is not entitled to do so or who fails to produce a ticket when he is required to have one.

Sub-section 31 (4) re-enacts the existing sub-section 31 (2).

Sub-section 31 (5) adds to the existing provision concerning onus of proof of a valid ticket, that the onus of proof of entitlement to travel without a valid ticket is also on the traveller.

Sub-section 31 (6) exempts a railways employé in the course of his duties.

Sub-section 31 (7) adds a definition of "carriage" to the definitions currently in section 31.

Clause 5 (a) inserts in the Principal Act a new section 31A to make provision for an authorized officer of the railways to serve infringement notices for offences specified in the Third Schedule.

Sub-section 31A (2) defines "authorized officer".

Sub-section 31A (3) specifies how a railways infringement notice may be served.

Sub-section 31A (4) specifies the matters to be included in railways infringement notices.

Sub-sections 31A (5) and (6) provide for the withdrawal of notices and refund of a penalty paid before withdrawal of a notice.

Sub-section 31A (7) specifies a penalty of \$25 payable where offences are proceeded against by way of railways infringement notices.

Sub-section 31A (8) provides that where a notice is not withdrawn, payment of the penalty expiates the offence, ends proceedings and no conviction is recorded.

Sub-section 31A (9) specifies the method of payment of a penalty.

Sub-sections 31A (10) and (11) provide that where a penalty is not paid or the notice is withdrawn, proceedings may be instituted for the offence as if the notice had never been served, except that, where the notice is not withdrawn, the penalty imposed by the court shall be \$25, costs may be awarded and the conviction shall not be deemed to be a conviction.

Sub-section 31A (12) provides for regulations to be made for the purposes of the section.

Clause 5 (b) inserts the Third Schedule of offences that may be proceeded against by way of railways infringement notices.

Clause 6 inserts in the Principal Act a new section 119A to establish a "Railways Offences Enforcement Fund" to receive money recovered by the railways from fines or penalties under the Act or by-laws or costs in any proceedings by or on behalf of the railways.

The Fund is for promoting observance of and enforcing the provisions of the Act and by-laws.

Clause 7 substitutes in the Principal Act a new section 141 to strengthen the railways existing powers to remove an offender endangering or annoying the public or hindering an officer in his duty.

In the removal of a person the use of force reasonable in the circumstances is permitted and the railways are indemnified from action arising from the removal.

Where unreasonable force is alleged the onus of proof will be on the person alleging it.