

ROAD TRANSPORT BILL.

EXPLANATORY PAPER.

INTRODUCTORY.

The purposes of this Bill are to amend the Commercial Goods Vehicles Act and the Transport Regulation Act.

The various amendments are designed to assist in the administration of those two Acts with the following objects :—

- (1) To assist in the collection of contributions towards road maintenance.
- (2) To overcome some of the problems associated with “border hopping”, that is to say, attempts by carriers to secure the protection of section 92 of the Commonwealth Constitution for their intra-State cartage.
- (3) To clarify the existing provisions restricting the use of vehicles operating under “as of right” licences to those purposes intended by Parliament.
- (4) To authorize certain unobjectionable practices which have recently been found to be unauthorized.
- (5) To define the duties of the Transport Regulation Board.
- (6) To assist the Board in maintaining the standards of licensed vehicles.
- (7) To protect taxi and hire car operators from fare scalers ; and
- (8) To authorize the transfer of passenger vehicle licences on payment of a special transfer fee.

Most of these objects have reference to both the Principal Acts and consequently there is some degree of repetition.

DETAILED EXPLANATION OF CLAUSES OF THE BILL.

CLAUSE 1.

This clause contains the usual Short Title, Citation, and Commencement provisions.

CLAUSE 2.

This clause names the *Commercial Goods Vehicles Act* 1958 as the Principal Act for Part I. of the Bill.

CLAUSE 3.

Introduces two new definitions and amends two existing definitions in order to enable the authorities to calculate the rate of road maintenance contributions in respect of any vehicle, and refers particularly to vehicles registered in other States.

Paragraph (a).

This paragraph inserts definition of "gross train weight" and of "gross vehicle weight" into the Principal Act. "Gross train weight" is defined as the "gross train weight" shown in the Certificate of Registration of the vehicle, that is to say, the maximum weight at which the motor car with a trailer attached thereto may be legally operated in Victoria or, where no such figure is included in the Certificate of Registration, a weight of 20 tons for a large two-axle motor car or 28 tons for a large three-axle motor car. These weights are below those at which such motor cars are authorized by the Motor Car Act to operate in Victoria.

"Gross vehicle weight" is similarly defined but refers to a motor car without any trailer attached. The weights specified for use in instances where the figure is not shown in the Certificate of Registration are in each case below that at which that type of motor car is authorized by the Motor Car Act to operate in Victoria.

Paragraph (b).

This paragraph amends the existing definition of "load capacity" to take advantage of the new definitions of "gross train weight" and "gross vehicle weight", respectively. Where the load capacity is not shown in or cannot be calculated from information appearing on the Certificate of Registration, it is specified to be 60 per cent. of the "gross train weight" or "gross vehicle weight" as the case may be. Although this 60 per cent. is only an approximation, it is closely related to fact.

Paragraph (c).

Similarly amends the existing definition of "tare weight" for the same purpose.

These four definitions between them will enable the rate of contribution for road maintenance to be assessed for any vehicle irrespective of the lack of information given in the Certificate of Registration issued in other States.

CLAUSE 4.

This clause also contains provisions designed to assist in the collection of road maintenance contributions.

Paragraph (a).

This paragraph adds two sub-sections 3 and 4 to section 3 of the Principal Act.

Sub-section 3 authorizes the Board under certain circumstances to determine the load capacity of a motor car after the owner thereof has been given the opportunity to express his views.

Some interstate owners have managed to get the load capacities of their vehicles assessed at below 4 tons and thereby have removed themselves from liability for road maintenance contributions notwithstanding the fact that the vehicles are used regularly to carry loads far in excess of 4 tons. Some Victorian vehicle owners have adopted similar practices to enable the vehicle to be issued with a licence which can only be issued in respect of vehicles having a load capacity of less than 4 tons. This provision will enable such deliberate evasions to be rectified.

Sub-section 4 is merely an evidentiary provision to enable the fact of the determination of load capacity of a vehicle to be brought to the notice of a Court when necessary.

Paragraph (b).

Contains three provisions to assist in the collection of road maintenance contributions.

Sub-paragraph (i) is designed to allow documentary proofs to be used in proceedings for the recovery of road maintenance contributions by civil debt action. To date such documentary proofs can only be used in prosecutions for offences.

Sub-paragraph (ii) authorizes a certificate issued by the registration authorities in any State showing that a vehicle was registered for commercial purposes to be used as *prima facie* evidence of that fact.

Sub-paragraph (iii) provides that evidence of the registration of the vehicle for commercial purposes or evidence that the vehicle was used to carry goods is *prima facie* evidence that the vehicle is a commercial goods vehicle and, as such, subject to the provisions requiring road maintenance contributions to be paid.

The provisions in sub-paragraphs (ii) and (iii) apply particularly in respect of vehicles from other States in respect of which it is almost impossible without great expense and delay to obtain the necessary evidence from the owner.

CLAUSE 5 (1).

Adds and amends the definitions in the Principal Act.

Paragraph (a).

Inserts a definition of “forwarding agent” into the Principal Act.

Paragraph (b).

Amends the definition of “owner” to include under certain circumstances a “forwarding agent”.

Paragraph (c).

Amends the interpretation of “tow truck” in order to include some new developments in the form of crane trailers which can be attached to any motor car enabling it to be used as a tow truck.

The provisions in paragraphs (a) and (b) are designed to assist in dealing with arrangements under which a “middle man” obtains contracts for cartage by road of goods from one place in Victoria to another place in Victoria. To overcome the provisions of the Commercial Goods Vehicles Act, he himself contracts with one carrier to carry the goods to an interstate address, and a second carrier to return them thence to Victoria.

CLAUSE 5 (2).

Contains provisions replacing the existing trans-shipment provisions—section 20 of the Principal Act.

Sub-section 20 (1) provides that, where goods are carried in stages by trans-shipment from one vehicle to another, each vehicle which carries the goods on any stage is deemed to have carried them over all stages and is thereby operated outside the conditions of its licence, unless one of the vehicles engaged in the cartage over one of the stages was authorized to carry the goods for hire and reward over all the stages.

Sub-section 20 (2) provides that the foregoing shall apply notwithstanding the fact that, except for it, the carriage of the goods on each individual stage was lawful.

Sub-section 20 (3) gives the person charged a good defence where he did not know and could not be expected to know that the goods were to be carried by stages.

CLAUSE 6.

Contains mainly machinery measures to assist the Board in its administration of the Commercial Goods Vehicles Act.

Paragraph (a).

Extends the area in which a country carrier may operate his vehicle from a radius of 20 miles to a radius of 25 miles, thus bringing it into line with the licences issued to metropolitan and urban carriers.

It does, however, limit the country carrier in as much as he will not be allowed to carry goods between places more than 30 miles apart within the area in which he is licensed to operate.

These provisions are designed to assist the country resident to have the local carrying services to which he is entitled by preventing carriers from setting themselves up as route hauliers between places such as Geelong and Melbourne.

Paragraph (b).

Adds three new sub-sections 6, 7, and 8 to section 5 of the Principal Act.

Sub-section 6 provides that a licence shall be void if a country carrier ceases to carry on business at the place of business specified in the licence.

Sub-section 7 has the same effect in respect of the licence for a vehicle owned by a merchant. If the merchant ceases to carry on his business at the place specified in the licence as his principal place of business, the licence becomes void.

Sub-section 8 authorizes the Board to refuse to issue a licence "as of right" in respect of a vehicle which is not fit for the purpose for which it is to be used.

Paragraph (c).

Amends the existing sub-section 12 (1) of the Principal Act to limit the currency period of licences issued "as of right" to one year. From an administrative point of view such licences have always been treated as having a currency period of one year, but the existing provision giving them a currency period of four years has caused the Board a lot of unnecessary work.

Under the new provisions the Board will merely send out an application to renew the licence each year exactly as is done by the Motor Registration Branch in respect of the registrations of motor cars.

The currency period of discretionary licences is not varied in any way and remains at four years.

Paragraph (d).

Adds a new section 12A to the Principal Act. This section provides that if the holder of the licence ceases to be the owner of the vehicle or if another licence is issued in respect of the vehicle, the earlier licence becomes void.

Paragraph (e).

Amends the provisions relating to the payment of fees contained in sub-section 14 (3) of the Act by replacing that sub-section with three sub-sections 3, 4, and 5.

Sub-section 3 sets out when the fees in respect of any licence shall be paid. It does not vary the amount of the fee or the time at which it shall be paid in any way.

Sub-section 4 provides that, where a fee is payable but has not been paid, the licence shall become void.

Sub-section 5 will enable the Board to reinstate a licence where it has become void by reason of non-payment of the fee.

Paragraph (f).

Adds two new sections 16A and 16B to the Principal Act.

Section 16A authorizes the Board to permit the substitution of another vehicle for a licensed vehicle which the owner desires to discard.

This practice has always been permitted, but recent Crown Law advice points to the lack of Board authority to do this.

Section 16B (1) authorizes the Board to cancel a licence issued in respect of a vehicle which has become unfit for use, after giving its owner an opportunity of stating his views.

Sub-section 16B (2) enables the Board to revoke any such cancellation if a suitable vehicle is substituted or the vehicle has been made fit for use.

Paragraph (g).

Amends the powers conferred by section 25 of the Principal Act on the Governor in Council to make regulations.

Sub-paragraph (i) enables regulations to be made for certificates as well as licences and permits. These certificates are the special driver certificates now required by the drivers of tow trucks.

Sub-paragraphs (ii) enables regulations to be made for the replacement of lost or destroyed certificates as well as licences or permits.

Sub-paragraph (iii) adds two further regulation-making powers, (*ha*) prescribing fees for the supply of equipment or services, and (*hb*) for the refund of fees paid.

Clause 7.

Adds a new section 26A to the Principal Act. This section is designed to assist in the recovery of road maintenance contributions from companies which have defaulted. Many of these companies are found to have no assets of any sort and the provisions will enable recovery to be effected from the individual directors. This is accomplished by making the individual directors the owners of the vehicles operated by the company.

Sub-section 26A (1) amends as regards road maintenance contributions the definition of owner, where the owner is a corporation, to include the directors of that corporation.

Sub-section 26A (2) defines a director.

Sub-section 26A (3) is an evidentiary provision which enables a certificate from the Registrar of Companies stating that a person is shown on returns held by the Registrar to be a director to be *prima facie* evidence that he is a director.

Sub-section 26A (4) empowers any director who has been required to pay road maintenance contributions on behalf of the corporation to recover such payment from the corporation or from other directors.

Sub-section 26A (5) prevents the Board from recovering contributions from more than one party, either the corporation itself or any director.

CLAUSE 8.

This Clause names the *Transport Regulation Act 1958* as the Principal Act in Part II. of the Bill.

CLAUSE 9.

Adds a new section 13A to the Principal Act. This section provides that the Board may and shall if so directed by the Minister carry out such studies, investigations, and inquiries as are necessary or expedient for the purpose of its administration of both the *Transport Regulation Act* and the *Commercial Goods Vehicles Act*.

CLAUSE 10.

Imposes additional liabilities on the drivers of certain motor cars by amending section 16 of the Principal Act.

Paragraph (a).

Substitutes four new paragraphs for the existing paragraph (c) of sub-section (1).

The new paragraph (c) authorizes any of the Board's officers who are authorized by the Board in writing or any member of the Police Force to request a driver of a motor car to permit an inspection and examination of the motor car, the load carried thereon and any equipment required to be carried thereon.

The existing provision only authorizes the Inspector to request the driver to permit an inspection to be made of the motor car. It is impossible to ascertain whether there is compliance with the provisions of the Commercial Goods Vehicles Act or the Transport Regulation Act without ascertaining details of the load carried thereon, and this provision removes the element of doubt which existed as to whether the inspection of the motor car included the inspection of the loading.

The new paragraph (d) requires the driver to keep the motor car stationary for sufficient period to allow the inspection to be made.

The new paragraph (e) requires the driver in certain instances to take the motor car to a convenient place where the inspection can be carried out with safety.

The new paragraph (f) requires the driver under certain instances to present the vehicle at some reasonable time and place for inspection and weighing.

None of these provisions are more than the average driver expects, and it is only in comparatively rare instances that drivers have refused to allow an inspection of the load, or have acted in such a way as to imperil the safety of the Board's officers.

Paragraph (b).

Amends sub-section 16 (2) of the Principal Act to make the driver guilty of an offence if he refuses or fails to comply with a proper request made by the Board's officer.

CLAUSE 11.

Includes a number of machinery matters and also refers to fare scalers.

Paragraph (a).

Amends the definition of owner in the Principal Act to include the person in whose name the vehicle is registered in another State. This provision has always appeared in the Commercial Goods Vehicles Act but by some oversight was omitted from the Transport Regulation Act.

Paragraph (b).

Amends the provisions in section 28 of the Principal Act dealing with the payment of fees by substituting three new sub-sections (3) (4) and (5) for the existing sub-section (3). It does not vary the fees payable in any way nor the time at which they become payable.

Sub-section (3) sets out when the fees shall be payable.

Sub-section (4) provides that where fees are payable but have not been paid the licence becomes void.

Sub-section (5) authorizes the Board to reinstate any licence so voided after the fee has been paid.

Paragraph (c).

Adds new sections 30A and 30B to the Principal Act to authorize current practices.

Section 30A authorizes the Board to permit the substitution of a vehicle for a licensed vehicle which the owner desires to discard.

Sub-section 30B (1) authorizes the Board after having given the owner of the vehicle an opportunity to state his views to cancel a licence issued in respect of a vehicle which has become unsuitable for use.

Sub-section 30B (2) empowers the Board to revoke any such cancellation of licence if a suitable vehicle is substituted or the licensed vehicle is brought into a state satisfactory for use.

Paragraph (d).

Adds a new section 32A to the Principal Act. This section enables the Board to revoke or suspend any licence which has been obtained by misrepresentation or if the holder of the licence or certificate becomes unfitted for the position.

Before issuing any licence or certificate the Board is required to satisfy itself as to the character, qualifications, and financial stability of the applicant, and a person of bad character is not given a licence. However, once the licence or certificate is issued, notwithstanding the fact that the holder may have been convicted of sexual or other criminal offences, there is at present no way of terminating the licence. This provision is designed to overcome that defect.

The holder is protected in as much as the Board cannot take action to revoke or suspend until he has had the opportunity to state his views.

Paragraph (e) amends sub-section 34 (2) of the Principal Act to provide that permit fees be a civil debt recoverable by Court procedure. This again has always been included in the Commercial Goods Vehicles Act but by some oversight has been omitted from the Transport Regulation Act.

Paragraph (f).

Adds a new section 43A to the Principal Act.

This section creates non-payment of a fare an offence and authorizes the Court which deals with the matter to order that the fare scaler compensate the driver concerned for—

(a) the unpaid fare ; and

(b) expense and loss of earning power resulting from his appearance in Court as a witness.

Paragraph (g).

Amends section 44 of the Principal Act which authorizes the Governor in Council to make regulations.

Sub-paragraph (i) enables regulations to be made for the safety, comfort, and convenience of the driver as well as of the passengers.

Sub-paragraph (ii) adds the power to make regulations in regard to Driver's Certificates as well as licences and permits.

Sub-paragraph (iii) adds Driver's Certificates to the regulation-making powers for applications or revocation of licences or permits.

Sub-paragraph (iv) enables regulations to be made for the replacement of such certificates and equipment as well as for lost licences and permits.

Sub-paragraph (v) enables regulations to be made prescribing fees for certificates and the inspection of vehicles as well as for the testing of taxi meters and other services supplied by the Board.

Sub-paragraph (vi) adds two new regulation-making powers (ka) and (kb). Clause (ka) authorizes regulation-making regarding the transfer of licences and the prescribing of fees for transfer, and (kb) authorizes regulation-making for the licensing of booking offices handling taxi bookings.

CLAUSE 12.

Adds a new section 27A to the Principal Act dealing with the transfer from one person to another of commercial passenger vehicle licences.

The present position is that, of some 2,500 metropolitan taxi and hire car licences at present in force, approximately two-thirds can be transferred, and are transferred after sale for sums up to several thousands of pounds, while the remainder are non-transferable. These non-transferable licences are additional licences issued by the Board since 1952 to enable the increased population to have reasonable

service. They have been issued only to persons who have spent long years fully employed as taxi drivers and are also subject to the condition that operating the taxi or hire car is the holder's sole means of support. It is apparent that there is some unfairness in this position which the provisions in this section are designed to overcome.

Sub-section 27A (i) provides that the holder of a licence other than a temporary licence may apply for authority to transfer the licence.

Sub-section (ii) authorizes the Board to allow the transfer after it has satisfied itself that the transferee is a suitable person.

Sub-section (iii) authorizes the Board to effect the transfer after receipt from the transferor and transferee of a transfer in the prescribed form.

Sub-section (iv) provides that there shall be a fee payable in respect of the transfer of any licence and specifies how that fee shall be calculated.

Sub-section (v) provides that the value of the licence on which the fee is to be assessed shall be the current market price of the licence and shall be determined by the Board. This provision is designed to prevent evasion of the correct fee by pretence of selling the licence at a price much below the real value.

CLAUSE 13.

Adds a new Schedule to the Principal Act.

This Schedule sets out the amount of the fee to be paid in respect of the transfer of any licence.

In respect of licences containing a condition prohibiting transfer, i.e., the existing non-transferable taxi licences, these would now become transferable on payment of a fee based on a sliding scale of from 25 to 2½ per cent. of licence goodwill value according to the number of years the licence has been held with a minimum period of ownership of ten years. At less than eleven years the fee will be 25 per cent. and then, for each additional year of ownership, the fee is reduced until after nineteen years in existence the fee is 5 per cent. and, at twenty years, 2½ per cent.

In respect of all other passenger licences, taxi or bus, throughout Victoria the basic fee will be 2½ per cent. of its goodwill value except where it is transferred to a beneficiary of a deceased holder or to a corporation of which the holder is a director or in such other cases as are determined by the Board. The fee in respect of such exemptions will be 10s.

Revenue from all such transfer fees, while paid into the Transport Regulation Fund, will be applied by the Board towards providing amenities for the travelling public using licensed bus and taxi services.