

## New South Wales.



ANNO PRIMO

## EDWARDI VIII REGIS.

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### Act No. 19, 1936.

An Act to make certain provisions in relation to officers of the Department of Railways and of the Department of Road Transport and Tramways who have been incapacitated by injury; to amend the Government Railways Act, 1912-1934, the Transport Act, 1930, and certain other Acts in certain respects; to validate certain matters; and for purposes connected therewith. [Assented to, 22nd June, 1936.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

**1.** This Act may be cited as the "Government Rail-ways and Transport (Amendment) Act, 1936." Short title.



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*Government Railways and Transport (Amendment).*

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Amendment of  
Act No. 30,  
1912, s. 82.  
(Officers guilty  
of misconduct.)

**2.** (1) The Government Railways Act, 1912-1934, is amended by omitting from section eighty-two the words "in the prescribed manner."

Amendment of  
Act No. 18,  
1930, s. 109.  
(Officers guilty  
of misconduct.)

(2) The Transport Act, 1930, as amended by subsequent Acts, is amended by omitting from section one hundred and nine the words "in the prescribed manner."

Validation  
of acts of  
heads of  
branches.

(3) (a) Any action taken, before the commencement of this Act, by the officer at the head of any branch of the railway service which would have been valid if the amendment made by subsection one of this section had been in force at the time such action was taken, is hereby validated.

(b) Any action taken, before the commencement of this Act, by the officer at the head of any branch of the transport service which would have been valid if the amendment made by subsection two of this section had been in force at the time such action was taken, is hereby validated.

Saving.

(4) Any alteration of the law made by this section shall not affect any action or proceeding concluded before the commencement of this Act.

(5) The Government Railways Act, 1912-1934, is further amended by inserting in section eighty-two after the words "dealt with" the words "shall be notified in writing of the nature of the misconduct charged or of the breach of rule, by-law or regulation alleged to have been committed and".

(6) The Transport Act, 1930, is further amended by inserting in section one hundred and nine after the words "dealt with" the words "shall be notified in writing of the nature of the misconduct charged or of the breach of rule or regulation alleged to have been committed and".

Further  
amendment of  
Act No. 30,  
1912.  
Substituted  
sec. 100B.

**3.** (1) The Government Railways Act, 1912-1934, is further amended by omitting section 100B and by inserting in lieu thereof the following section:—

Officer in-  
capacitated  
by injury.

100B. (1) Where an officer has been incapacitated by injury arising out of and in the course of his employment so as to be unable to perform the duties of the classification to which at the date of the injury he



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he had been appointed, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity, not less than the salary for the time being payable to officers with the same classification and with the same length of service therein as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the railway service.

(2) Where an officer who has been incapacitated by injury arising out of and in the course of his employment was, at the date of such injury, and had been, for a continuous period of not less than four months immediately preceding such date, or for periods amounting to four months in the aggregate, during the period of twelve months immediately preceding such date employed upon duties of a classification (in this subsection referred to as the "higher classification") carrying a higher salary than the classification to which at that date he had been appointed, and where the incapacity is such that such officer is by reason thereof unable to perform the duties of the higher classification, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity not less than the salary for the time being payable to officers performing duties in such higher classification (not being officers who have been appointed thereto) with the same length of service upon such duties as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the railway service.

(2) The Transport Act, 1930, as amended by subsequent Acts, is further amended by omitting section one hundred and twenty-four and by inserting in lieu thereof the following section:—

124. (1) Where an officer has been incapacitated by injury arising out of and in the course of his employment so as to be unable to perform the duties of the classification to which at the date of the injury

he

Further  
amendment of  
Act No. 18,  
1930.  
Substituted  
sec. 124.

Officer in-  
capacitated  
by injury.



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he had been appointed, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity, not less than the salary for the time being payable to officers with the same classification and with the same length of service therein as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the transport service.

(2) Where an officer who has been incapacitated by injury arising out of and in the course of his employment was, at the date of such injury, and had been, for a continuous period of not less than four months immediately preceding such date, or for periods amounting to four months in the aggregate, during the period of twelve months immediately preceding such date, employed upon duties of a classification (in this subsection referred to as the "higher classification") carrying a higher salary than the classification to which at that date he had been appointed, and where the incapacity is such that such officer is by reason thereof unable to perform the duties of the higher classification, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity, not less than the salary for the time being payable to officers performing duties in such higher classification (not being officers who have been appointed thereto) with the same length of service upon such duties as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the transport service.

Commence-  
ment of  
subsections  
one and  
two.

(3) (a) Subsection one of this section shall be deemed to have commenced on the first day of January, one thousand nine hundred and seventeen.

(b) Subsection two of this section shall be deemed to have commenced on the fifth day of August, one thousand nine hundred and thirty.

(4)



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(4) In the case of any officer who was, before the commencement of this Act, incapacitated by injury arising out of and in the course of his employment (not being an injury caused by his own serious and wilful misconduct) and who is, as a result of such incapacity, immediately before such commencement, employed upon duties of a classification lower than the classification to which, at the date of the injury, he had been appointed, any alteration of the law made by this section shall not operate so as to reduce the salary of such officer to a rate less than the rate payable to him immediately before such commencement.

(5) Any alteration of the law made by this section Saving. shall not affect any action or proceeding concluded before the commencement of this Act.

(6) Notwithstanding the retrospective effect given by subsection three of this section, to the amendments made by subsections one and two of this section, no officer affected by section 100B of the Government Railways Act, 1912, or by section one hundred and twenty-four of the Transport Act, 1930 (as respectively inserted by this section) who has, in respect of any period before the commencement of this Act, been paid salary at a rate less than the appropriate rate as ascertained in accordance with such sections, shall be entitled to any further payment in respect of any such period except as follows:—

- (a) Where the officer concerned was not, at the commencement of this Act, in receipt of weekly payments by way of compensation he shall be paid such sum (if any) as represents the excess of the amount of salary at such appropriate rate for the period ascertained in accordance with paragraph (b) of this subsection over the total of all amounts paid to or for the benefit of such officer in respect of such period, whether as weekly payments by way of compensation or as the cost of medical or hospital treatment or ambulance service, or as salary properly payable to such officer for the performance of the duties of the classification in which he is employed during such period:

Provided



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Provided that where the officer concerned has elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended) to accept an amount payable in accordance with the table to that section, he shall not be entitled to any payment under this paragraph.

(b) The period referred to in paragraph (a) of this subsection shall be—

(i) Where the officer concerned was injured less than one year before the commencement of this Act—the period commencing on the date upon which he was injured and terminating on the date of commencement of this Act;

(ii) Where the officer concerned was injured more than one year before the commencement of this Act and was, at the beginning of the period of one year before such commencement totally incapacitated as a result of such injury—the period commencing on the date upon which such total incapacity commenced and terminating on the date of the commencement of this Act;

(iii) In every other case—the period of twelve months immediately preceding the commencement of this Act.

(c) Where the officer concerned was, at the commencement of this Act, in receipt of weekly payments by way of compensation, and makes the election referred to in subsection five of section 100b of the Government Railways Act, 1912, or in subsection five of section 124b of the Transport Act, 1930 (as respectively inserted by this Act) he shall be paid such sum (if any) as is ascertained in accordance with the said subsections.

**4. (1)** The Government Railways Act, 1912-1934, is further amended by inserting next after section 100b the following new sections:—

100c. (1) Except as provided in subsection two of this section any officer who, after having been retired



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retired from or having otherwise left the railway service, has been re-employed in such service, shall not, by reason of any incapacity resulting from injury received during his former period of employment, be entitled to payment of salary at a rate ascertained in accordance with section 100B of this Act.

(2) Where any officer who has been retired from or has otherwise left the railway service as a result of incapacity occasioned by injury arising out of and in the course of his employment, is re-employed in such service the following provisions shall have effect—

(a) Where such officer was so re-employed by reason of having been required pursuant to section one hundred and nineteen of this Act to resume his duties or to undertake other duties, he shall be entitled while he remains in the railway service to payment of salary at a rate ascertained in accordance with section 100B of this Act.

(b) Where such officer was so re-employed by reason of having been required by the Commissioner for Railways to resume his duties or to undertake other duties, and, at the date upon which he was so re-employed, was receiving weekly payments by way of compensation he shall, if he so elects, be entitled while he remains in the railway service to payment of salary at a rate ascertained in accordance with section 100B of this Act.

Where any such officer does so elect he shall as from the date of such election cease to be entitled to such weekly payments by way of compensation.

100D. (1) Where an officer has, pursuant to section 100B of this Act, become entitled to payment of salary at a rate ascertained in accordance with that section, he shall, to the exclusion of any right while he remains in the railway service to compensation or damages against the Commissioner for Railways,

Election between rights under sec. 100B, and right to compensation or damages.

continue



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continue to be so entitled during incapacity attributable to the injury and while he remains in the railway service unless—

- (a) where the injury was sustained not less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, he elects to make a claim against the Commissioner for Railways for compensation; or
- (b) where the injury was sustained within one year before or was sustained after such commencement he elects to make a claim against such Commissioner for compensation or damages; or
- (c) he is, by the operation of subsection five of this section excluded from the benefits of section 100B of this Act.

(2) Any such election may be made by notice in writing given to the Commissioner for Railways or by the institution of proceedings for the recovery of compensation or damages.

(3) Any such election shall be made—

- (a) where the injury was sustained before the commencement of the Government Railways and Transport (Amendment) Act, 1936—as soon as practicable after such commencement but not in any such case later than six months after—
  - (i) such commencement, where the officer concerned was incapacitated as a result of the injury at such commencement; or
  - (ii) the beginning of the first period of incapacity resulting from the injury where the officer concerned was not incapacitated as a result of the injury at such commencement;
- (b) where the injury was sustained after the commencement of the Government Railways and



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and Transport (Amendment) Act, 1936—as soon as practicable after the injury was sustained but not in any such case later than six months after the beginning of the first period of incapacity resulting from the injury.

(4) Where any such election is made,

- (a) the officer shall, as from the date of such election, cease to be entitled to payment of the salary at the rate ascertained under section 100B of this Act; and
- (b) any amounts paid to such officer before such date by way of salary at the rate so ascertained shall where any sum becomes payable by the Commissioner for Railways as compensation (including the cost of medical or hospital treatment or ambulance service) or as damages be set off against such sum after making due allowance, in the case of any officer who had returned to duty before the date of such election, for any salary properly payable to such officer in respect of the duties of the classification in which he is employed after his return to duty and before the date of such election.

(5) Where any such officer has, before the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation against the Commissioner for Railways in respect of an injury received before such commencement the following provisions shall have effect:—

- (a) Where the officer concerned before such commencement, elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended), to accept an amount payable in accordance



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accordance with the table to that section, such officer shall be excluded from the benefits of section 100B of this Act in respect of any period before the commencement of the Government Railways and Transport (Amendment) Act, 1936, but as from such commencement shall, notwithstanding the provisions of section forty-seven of the Workers' Compensation Act, 1926, as amended by subsequent Acts, be entitled to the benefits conferred by section 100B of this Act.

- (b) Where the officer concerned is, at the date of such commencement, receiving weekly payments by way of compensation, he may elect to abandon his claim to such weekly payments and to accept the benefits of section 100B of this Act, and if he does not so elect, within the time prescribed by paragraph (c) of this subsection, he shall be excluded from the benefits of section 100B of this Act.
- (c) Any election under this subsection shall be made in writing to such Commissioner as soon as practicable after such commencement and not in any case later than six months after such commencement.
- (d) Where any officer exercises the right of election under this subsection he shall, as soon as practicable thereafter, take any action necessary to carry into effect the abandonment of his claim to such weekly payments or to terminate any right to such weekly payments which may have accrued to him by reason of such claim, and the election shall not be deemed to have been completed until he has done so.
- (e) Where an election under this subsection has been completed the officer concerned shall be



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be paid such sum (if any) as represents the excess of the amount of salary at the appropriate rate ascertained in accordance with section 100B of this Act for the period ascertained in accordance with paragraph (f) of this subsection over the total of all amounts paid to or for the benefit of such officer in respect of such period, whether as weekly payments by way of compensation or as the cost of medical or hospital treatment or ambulance service, or as salary properly payable to such officer for the performance of the duties of the classification in which he is employed during such period.

(f) The period referred to in paragraph (e) of this subsection shall be—

(i) Where the officer concerned was injured less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936,—the period commencing on the date upon which he was injured and terminating on the date upon which the election under this subsection is completed.

(ii) Where the officer concerned was injured more than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, and was, at the beginning of the period of one year immediately before such commencement totally incapacitated as a result of such injury—the period commencing on the date upon which such total incapacity commenced and terminating on the date upon which the election under this subsection is completed.

(iii) In every other case—the period commencing on a date being one year before



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before the date of the commencement of the Government Railways and Transport (Amendment) Act, 1936, and terminating on the date upon which the election under this subsection is completed.

Election between benefits under Part IX and right to compensation or damages against Commissioner.

100E. (1) An officer who—

- (a) is a contributor to the Government Railways Superannuation Account; and
- (b) has been incapacitated from the further discharge of his duties by injury arising out of and in the course of his employment, not being an injury caused by his own serious and wilful misconduct; and
- (c) by reason of such incapacity has been retired from or has otherwise left the railway service, after the commencement of the Government Railways and Transport (Amendment) Act, 1936,

shall be entitled to the benefits conferred by Part IX of this Act (other than the gratuity referred to in section one hundred and sixteen) and, in addition thereto, shall be entitled to make an election—

- (i) to claim the gratuity referred to in section one hundred and sixteen of this Act, in which case he shall not be entitled to make any other claim, whether for compensation or damages, against the Commissioner for Railways; or
- (ii) to make a claim for compensation, in which case he shall not be entitled to claim such gratuity or to make any claim for damages against such Commissioner; or
- (iii) to make a claim for damages against such Commissioner, in which case he shall not be entitled to make any claim against such Commissioner for compensation or to claim such gratuity:

Provided



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Provided that, where the officer concerned has before being retired from or otherwise leaving the railway service and either before or after the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation, and has elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended) to accept an amount payable in accordance with the table to that section, such officer shall not be entitled to make any such election or to claim such gratuity or to make any claim for compensation or damages.

(2) Any such election may be made by notice in writing given to the Commissioner for Railways or by the institution of proceedings against such Commissioner for the recovery of compensation or damages.

(2) The Transport Act, 1930, as amended by subsequent Acts, is further amended by inserting next after section one hundred and twenty-four the following new sections:—

Further  
amendment of  
Act No. 18,  
1930.  
New sec. 124A.

124A. (1) Except as provided in subsection two of this section any officer who, after having been retired from or having otherwise left the transport service has been re-employed in such service, shall not, by reason of any incapacity resulting from injury received during his former period of employment, be entitled to payment of salary at a rate ascertained in accordance with section one hundred and twenty-four of this Act.

Re-  
employed  
officers.

(2) Where any officer who has been retired from or has otherwise left the transport service as a result of incapacity occasioned by injury arising out of and in the course of his employment, is re-employed in such service the following provisions shall have effect:—

(a) Where such officer was so re-employed by reason of having been required pursuant to section one hundred and nineteen of the Government



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Government Railways Act, 1912-1934, to resume his duties or to undertake other duties he shall be entitled, while he remains in the transport service, to payment of salary at a rate ascertained in accordance with section one hundred and twenty-four of this Act.

- (b) Where such officer was so re-employed by reason of having been required by the Commissioner for Road Transport and Tramways to resume his duties or to undertake other duties, and at the date he was so re-employed was receiving weekly payments by way of compensation he shall, if he so elects, be entitled, while he remains in the transport service, to payment of salary at a rate ascertained in accordance with section one hundred and twenty-four of this Act.

Where any such officer does so elect he shall, as from the date of such election, cease to be entitled to such weekly payments by way of compensation.

Election between rights under sec. 124, and right to compensation or damages.

124B. (1) Where an officer has, pursuant to section one hundred and twenty-four of this Act, become entitled to payment of salary at a rate ascertained in accordance with that section, he shall, to the exclusion of any right while he remains in the transport service to compensation or damages against the Commissioner for Road Transport and Tramways, continue to be so entitled during incapacity attributable to the injury and while he remains in the transport service unless—

- (a) where the injury was sustained not less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, he elects to make a claim against the Commissioner for Road Transport and Tramways for compensation; or

(b)



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- (b) where the injury was sustained within one year before or was sustained after such commencement he elects to make a claim against such Commissioner for compensation or damages; or
- (c) he is, by the operation of subsection five of this section excluded from the benefits of section one hundred and twenty-four of this Act.

(2) Any such election may be made by notice in writing given to the Commissioner for Road Transport and Tramways or by the institution of proceedings for the recovery of compensation or damages.

(3) Any such election shall be made—

- (a) where the injury was sustained before the commencement of the Government Railways and Transport (Amendment) Act, 1936—as soon as practicable after such commencement but not in any such case later than six months after—
  - (i) such commencement, where the officer concerned was incapacitated as a result of the injury at such commencement; or
  - (ii) the beginning of the first period of incapacity resulting from the injury where the officer concerned was not incapacitated as a result of the injury at such commencement.
- (b) where the injury was sustained after the commencement of the Government Railways and Transport (Amendment) Act, 1936—as soon as practicable after the injury was sustained, but not in any such case later than six months after the beginning of the first period of incapacity resulting from the injury.

(4)



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(4) Where any such election is made—

- (a) the officer shall, as from the date of such election, cease to be entitled to payment of the salary at the rate ascertained under section one hundred and twenty-four of this Act; and
- (b) any amounts paid to such officer before such date by way of salary at the rate so ascertained shall where any sum becomes payable by the Commissioner for Road Transport and Tramways as compensation (including the cost of medical or hospital treatment or ambulance service) or as damages be set off against such sum, after making due allowance, in the case of any officer who had returned to duty before the date of such election, for any salary properly payable to such officer in respect ~~of the~~ duties of the classification in which he is employed after his return to duty and before the date of such election.

(5) Where any such officer has, before the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation against the Commissioner for Road Transport and Tramways in respect of an injury received before such commencement the following provisions shall have effect—

- (a) Where the officer concerned, before such commencement, elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended), to accept an amount payable in accordance with the table to that section, such officer shall be excluded from the benefits of section one hundred and twenty-four of this Act in respect of any period before the commencement of the Government Railways and Transport (Amendment) Act,

1936,



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1936, but as from such commencement shall, notwithstanding the provisions of section forty-seven of the Workers' Compensation Act, 1926, as amended by subsequent Acts, be entitled to the benefits conferred by section one hundred and twenty-four of this Act.

- (b) Where the officer concerned is, at the date of such commencement, receiving weekly payments by way of compensation, he may elect to abandon his right to such weekly payments and to accept the benefits of section one hundred and twenty-four of this Act, and if he does not so elect within the time prescribed by paragraph (c) of this subsection he shall be excluded from the benefits of section one hundred and twenty-four of this Act.
- (c) Any election under this subsection shall be made in writing to such Commissioner as soon as practicable after such commencement and not in any case later than six months after such commencement.
- (d) Where any officer exercises the right of election under this subsection he shall, as soon as practicable thereafter, take any action necessary to carry into effect the abandonment of his claim to such weekly payments or to terminate any right to such weekly payments which may have accrued to him by reason of such claim, and the election shall not be deemed to have been completed until he has done so.
- (e) Where an election under this subsection has been completed the officer concerned shall be paid such sum (if any) as represents the excess of the amount of salary at the appropriate rate ascertained in accordance with section one hundred and twenty-four of this Act for the period ascertained in accordance



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with paragraph (f) of this subsection over the total of all amounts paid to or for the benefit of such officer in respect of such period, whether as weekly payments by way of compensation or as the cost of medical or hospital treatment or ambulance service, or as salary properly payable to such officer for the performance of the duties of the classification in which he is employed during such period.

(f) The period referred to in paragraph (e) of this subsection shall be—

(i) Where the officer concerned was injured less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936—the period commencing on the date upon which he was injured and terminating on the date upon which the election under this subsection is completed.

(ii) Where the officer concerned was injured more than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, and was, at the beginning of the period of one year immediately before such commencement totally incapacitated as a result of such injury—the period commencing on the date upon which such total incapacity commenced and terminating on the date upon which the election under this subsection is completed.

(iii) In every other case—the period commencing on a date being one year before the date of the commencement of the Government Railways and Transport (Amendment) Act, 1936,

and



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and terminating on the date upon which the election under this subsection is completed.

124c. (1) An officer who—

- (a) is a contributor to the Government Railways Superannuation Account or to the State Superannuation Fund; and
- (b) has been incapacitated from the further discharge of his duties by injury arising out of and in the course of his employment, not being an injury caused by his own serious and wilful misconduct; and
- (c) by reason of such incapacity has been retired or has otherwise left the transport service after the commencement of the Government Railways and Transport (Amendment) Act, 1936,

Election between superannuation benefits, etc., and right to compensation or damages from Commissioner.

shall be entitled to the benefits conferred by Part IX of the Government Railways Act, 1912-1934 (other than the gratuity referred to in section one hundred and sixteen of that Act), or to the benefits conferred by the Superannuation Act, 1916-1935, as the case may be, and in addition thereto, shall be entitled to make an election—

- (i) where he is a contributor to the Government Railways Superannuation Account—
  - (a) to claim the gratuity referred to in section one hundred and sixteen of the Government Railways Act, 1912-1934, in which case he shall not be entitled to make any other claim, whether for compensation or damages, against the Commissioner for Road Transport and Tramways; or
  - (b) to make a claim for compensation, in which case he shall not be entitled to claim such gratuity or to make any claim for damages against such Commissioner; or

(c).



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- (c) to make a claim for damages against such Commissioner, in which case he shall not be entitled to make any claim against such Commissioner for compensation or to claim such gratuity; or
- (ii) where he is a contributor to the State Superannuation Fund—
  - (a) to make a claim for compensation, in which case he shall not be entitled to make any claim for damages against such Commissioner; or
  - (b) to make a claim for damages against such Commissioner, in which case he shall not be entitled to make any claim against such Commissioner for compensation:

Provided that, where the officer concerned has, before being retired from or otherwise leaving the transport service and either before or after the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation, and has elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended) to accept an amount payable in accordance with the table to that section, such officer shall not be entitled to make any such election or to claim such gratuity or to make any claim for compensation or damages.

(2) Any such election may be made by notice in writing given to the Commissioner for Road Transport and Tramways, or by the institution of proceedings against such Commissioner for the recovery of compensation or damages.

5. (1) The Government Railways Act, 1912-1934, is further amended—

- (a) (i) by inserting in section one hundred and forty-three after the word "done" wherever occurring the words "or omitted";
- (ii)

Further  
amendment of  
Act No. 30,  
1912.  
Sec. 143.  
(Limitation  
of actions  
against Com-  
missioners.)



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- (ii) by inserting in the same section after the words "the act" the words "or omission";
- (iii) by inserting at the end of the same section the words "or made";
- (b) by inserting in subsection one of section one hundred and forty-four after the word "done" wherever occurring the words "or omitted." Sec. 144.  
(Notice of action.)
- (2) The Transport Act, 1930, as amended by subsequent Acts, is further amended— Further amendment of Act No. 18, 1930.
  - (a) (i) by inserting in subsection two of section two hundred and thirty-two after the word "done" wherever occurring the words "or omitted"; Sec. 232.  
(Limitation of action.)
  - (ii) by inserting in the same subsection after the words "the act" the words "or omission";
  - (iii) by inserting at the end of the same subsection the words "or made";
  - (b) by inserting in subsection one of section two hundred and thirty-three after the word "done" wherever occurring the words "or omitted." Sec. 233.  
(Notice of action.)
- (3) (a) Subsection one of this section shall be deemed to have commenced on the twenty-sixth day of November, one thousand nine hundred and twelve. Commencement of subsections one and two.
- (b) Subsection two of this section shall be deemed to have commenced on the fifth day of August, one thousand nine hundred and thirty.
- (4) Any alteration of the law made by this section shall not affect any action or proceeding concluded before the commencement of this Act. Saving.

**6.** (1) The Government Railways Act, 1912-1934, is further amended by inserting at the end of section one hundred and three the following new paragraph:— Further amendment of Act No. 30, 1912.

This section shall not affect and shall be deemed never to have affected the operation of section 100B (whether as originally enacted or as inserted by the Government Railways and Transport (Amendment) Act, 1936) section 100c, section 100d, section 100E, section one hundred and forty-three, section one hundred and forty-four or section one hundred and forty-five of this Act. Sec. 103.  
(Right to sue.)



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*Government Railways and Transport (Amendment).*

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Further  
amendment  
of Act No.  
18, 1930.  
Sec. 125.  
(Right to  
sue.)

(2) The Transport Act, 1930, as amended by subsequent Acts, is further amended by inserting at the end of section one hundred and twenty-five the following new paragraph:—

This section shall not affect and shall be deemed never to have affected the operation of section one hundred and twenty-four (whether as originally enacted or as inserted by the Government Railways and Transport (Amendment) Act, 1936), section 124A, section 124B, section 124c, section two hundred and thirty-two, section two hundred and thirty-three or section two hundred and thirty-four of this Act.

Saving.

(3) Any alteration of the law made by this section shall not affect any action or proceeding concluded before the commencement of this Act.

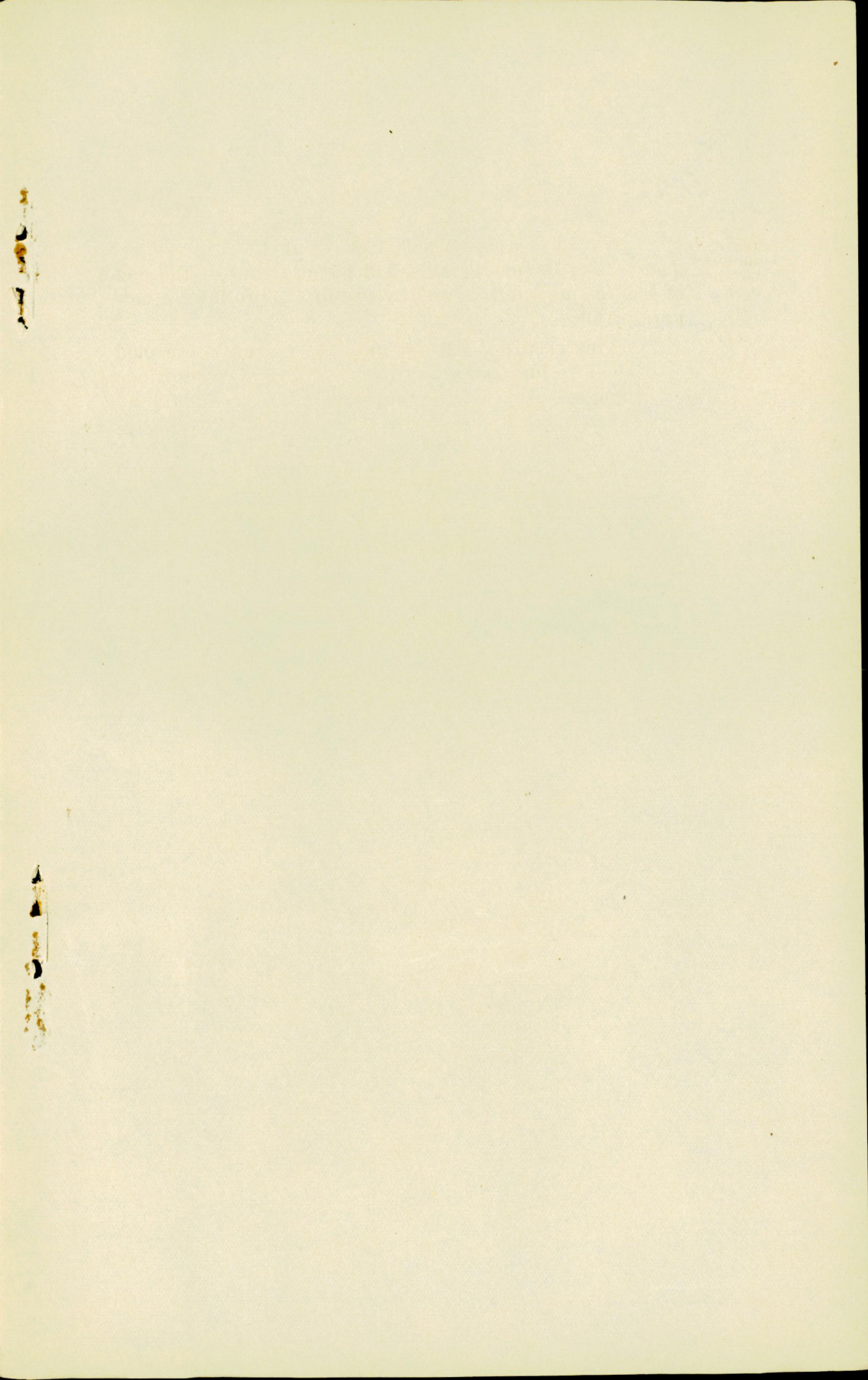
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By Authority:

ALFRED JAMES KENT, I.S.O., Government Printer, Sydney.—1936.

[9d.]











*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of New South Wales.*

W. R. McCOURT,  
*Clerk of the Legislative Assembly.*  
*Legislative Assembly Chamber.*  
*Sydney, 16 June, 1936.*

## New South Wales.



ANNO PRIMO

## EDWARDI VIII REGIS.

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### Act No. 19, 1936.

An Act to make certain provisions in relation to officers of the Department of Railways and of the Department of Road Transport and Tramways who have been incapacitated by injury; to amend the Government Railways Act, 1912-1934, the Transport Act, 1930, and certain other Acts in certain respects; to validate certain matters; and for purposes connected therewith. [Assented to, 22nd June, 1936.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** This Act may be cited as the "Government Railways and Transport (Amendment) Act, 1936." Short title.

**2.**

*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

W. W. HEDGES,  
*Chairman of Committees of the Legislative Assembly.*



Government Railways and Transport (Amendment).

Amendment of  
Act No. 30,  
1912, s. 82.  
(Officers guilty  
of misconduct.)

**2.** (1) The Government Railways Act, 1912-1934, is amended by omitting from section eighty-two the words "in the prescribed manner."

Amendment of  
Act No. 18,  
1930, s. 109.  
(Officers guilty  
of misconduct.)

(2) The Transport Act, 1930, as amended by subsequent Acts, is amended by omitting from section one hundred and nine the words "in the prescribed manner."

Validation  
of acts of  
heads of  
branches.

(3) (a) Any action taken, before the commencement of this Act, by the officer at the head of any branch of the railway service which would have been valid if the amendment made by subsection one of this section had been in force at the time such action was taken, is hereby validated.

(b) Any action taken, before the commencement of this Act, by the officer at the head of any branch of the transport service which would have been valid if the amendment made by subsection two of this section had been in force at the time such action was taken, is hereby validated.

Saving.

(4) Any alteration of the law made by this section shall not affect any action or proceeding concluded before the commencement of this Act.

(5) The Government Railways Act, 1912-1934, is further amended by inserting in section eighty-two after the words "dealt with" the words "shall be notified in writing of the nature of the misconduct charged or of the breach of rule, by-law or regulation alleged to have been committed and".

(6) The Transport Act, 1930, is further amended by inserting in section one hundred and nine after the words "dealt with" the words "shall be notified in writing of the nature of the misconduct charged or of the breach of rule or regulation alleged to have been committed and".

Further  
amendment of  
Act No. 30,  
1912.  
Substituted  
sec. 100B.

**3.** (1) The Government Railways Act, 1912-1934, is further amended by omitting section 100B and by inserting in lieu thereof the following section:—

Officer in-  
capacitated  
by injury.

100B. (1) Where an officer has been incapacitated by injury arising out of and in the course of his employment so as to be unable to perform the duties of the classification to which at the date of the injury he



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*Government Railways and Transport (Amendment).*

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he had been appointed, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity, not less than the salary for the time being payable to officers with the same classification and with the same length of service therein as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the railway service.

(2) Where an officer who has been incapacitated by injury arising out of and in the course of his employment was, at the date of such injury, and had been, for a continuous period of not less than four months immediately preceding such date, or for periods amounting to four months in the aggregate, during the period of twelve months immediately preceding such date employed upon duties of a classification (in this subsection referred to as the "higher classification") carrying a higher salary than the classification to which at that date he had been appointed, and where the incapacity is such that such officer is by reason thereof unable to perform the duties of the higher classification, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity not less than the salary for the time being payable to officers performing duties in such higher classification (not being officers who have been appointed thereto) with the same length of service upon such duties as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the railway service.

(2) The Transport Act, 1930, as amended by subsequent Acts, is further amended by omitting section one hundred and twenty-four and by inserting in lieu thereof the following section:—

Further  
amendment of  
Act No. 18,  
1930.  
Substituted  
sec. 124.

124. (1) Where an officer has been incapacitated by injury arising out of and in the course of his employment so as to be unable to perform the duties of the classification to which at the date of the injury

Officer in-  
capacitated  
by injury.

he



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*Government Railways and Transport (Amendment).*

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he had been appointed, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity, not less than the salary for the time being payable to officers with the same classification and with the same length of service therein as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the transport service.

(2) Where an officer who has been incapacitated by injury arising out of and in the course of his employment was, at the date of such injury, and had been, for a continuous period of not less than four months immediately preceding such date, or for periods amounting to four months in the aggregate, during the period of twelve months immediately preceding such date, employed upon duties of a classification (in this subsection referred to as the "higher classification") carrying a higher salary than the classification to which at that date he had been appointed, and where the incapacity is such that such officer is by reason thereof unable to perform the duties of the higher classification, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity, not less than the salary for the time being payable to officers performing duties in such higher classification (not being officers who have been appointed thereto) with the same length of service upon such duties as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the transport service.

Commence-  
ment of  
subsections  
one and  
two.

(3) (a) Subsection one of this section shall be deemed to have commenced on the first day of January, one thousand nine hundred and seventeen.

(b) Subsection two of this section shall be deemed to have commenced on the fifth day of August, one thousand nine hundred and thirty.

(4)



*Government Railways and Transport (Amendment).*

(4) In the case of any officer who was, before the commencement of this Act, incapacitated by injury arising out of and in the course of his employment (not being an injury caused by his own serious and wilful misconduct) and who is, as a result of such incapacity, immediately before such commencement, employed upon duties of a classification lower than the classification to which, at the date of the injury, he had been appointed, any alteration of the law made by this section shall not operate so as to reduce the salary of such officer to a rate less than the rate payable to him immediately before such commencement.

(5) Any alteration of the law made by this section <sup>Saving.</sup> shall not affect any action or proceeding concluded before the commencement of this Act.

(6) Notwithstanding the retrospective effect given by subsection three of this section, to the amendments made by subsections one and two of this section, no officer affected by section 100B of the Government Railways Act, 1912, or by section one hundred and twenty-four of the Transport Act, 1930 (as respectively inserted by this section) who has, in respect of any period before the commencement of this Act, been paid salary at a rate less than the appropriate rate as ascertained in accordance with such sections, shall be entitled to any further payment in respect of any such period except as follows:—

- (a) Where the officer concerned was not, at the commencement of this Act, in receipt of weekly payments by way of compensation he shall be paid such sum (if any) as represents the excess of the amount of salary at such appropriate rate for the period ascertained in accordance with paragraph (b) of this subsection over the total of all amounts paid to or for the benefit of such officer in respect of such period, whether as weekly payments by way of compensation or as the cost of medical or hospital treatment or ambulance service, or as salary properly payable to such officer for the performance of the duties of the classification in which he is employed during such period:

Provided



*Government Railways and Transport (Amendment).*

Provided that where the officer concerned has elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended) to accept an amount payable in accordance with the table to that section, he shall not be entitled to any payment under this paragraph.

(b) The period referred to in paragraph (a) of this subsection shall be—

(i) Where the officer concerned was injured less than one year before the commencement of this Act—the period commencing on the date upon which he was injured and terminating on the date of commencement of this Act;

(ii) Where the officer concerned was injured more than one year before the commencement of this Act and was, at the beginning of the period of one year before such commencement totally incapacitated as a result of such injury—the period commencing on the date upon which such total incapacity commenced and terminating on the date of the commencement of this Act;

(iii) In every other case—the period of twelve months immediately preceding the commencement of this Act.

(c) Where the officer concerned was, at the commencement of this Act, in receipt of weekly payments by way of compensation, and makes the election referred to in subsection five of section 100B of the Government Railways Act, 1912, or in subsection five of section 124B of the Transport Act, 1930 (as respectively inserted by this Act) he shall be paid such sum (if any) as is ascertained in accordance with the said subsections.

Further  
amendment of  
Act No. 30,  
1912.  
New secs.  
100c-100n.  
Re-  
employed  
officers.

4. (1) The Government Railways Act, 1912-1934, is further amended by inserting next after section 100B the following new sections:—

100c. (1) Except as provided in subsection two of this section any officer who, after having been retired



*Government Railways and Transport (Amendment).*

retired from or having otherwise left the railway service, has been re-employed in such service, shall not, by reason of any incapacity resulting from injury received during his former period of employment, be entitled to payment of salary at a rate ascertained in accordance with section 100B of this Act.

(2) Where any officer who has been retired from or has otherwise left the railway service as a result of incapacity occasioned by injury arising out of and in the course of his employment, is re-employed in such service the following provisions shall have effect—

- (a) Where such officer was so re-employed by reason of having been required pursuant to section one hundred and nineteen of this Act to resume his duties or to undertake other duties, he shall be entitled while he remains in the railway service to payment of salary at a rate ascertained in accordance with section 100B of this Act.
- (b) Where such officer was so re-employed by reason of having been required by the Commissioner for Railways to resume his duties or to undertake other duties, and, at the date upon which he was so re-employed, was receiving weekly payments by way of compensation he shall, if he so elects, be entitled while he remains in the railway service to payment of salary at a rate ascertained in accordance with section 100B of this Act.

Where any such officer does so elect he shall as from the date of such election cease to be entitled to such weekly payments by way of compensation.

100D. (1) Where an officer has, pursuant to section 100B of this Act, become entitled to payment of salary at a rate ascertained in accordance with that section, he shall, to the exclusion of any right while he remains in the railway service to compensation or damages against the Commissioner for Railways,

Election between rights under sec. 100B, and right to compensation or damages,

continue



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*Government Railways and Transport (Amendment).*

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continue to be so entitled during incapacity attributable to the injury and while he remains in the railway service unless—

- (a) where the injury was sustained not less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, he elects to make a claim against the Commissioner for Railways for compensation; or
- (b) where the injury was sustained within one year before or was sustained after such commencement he elects to make a claim against such Commissioner for compensation or damages; or
- (c) he is, by the operation of subsection five of this section excluded from the benefits of section 100B of this Act.

(2) Any such election may be made by notice in writing given to the Commissioner for Railways or by the institution of proceedings for the recovery of compensation or damages.

(3) Any such election shall be made—

- (a) where the injury was sustained before the commencement of the Government Railways and Transport (Amendment) Act, 1936—as soon as practicable after such commencement but not in any such case later than six months after—
  - (i) such commencement, where the officer concerned was incapacitated as a result of the injury at such commencement; or
  - (ii) the beginning of the first period of incapacity resulting from the injury where the officer concerned was not incapacitated as a result of the injury at such commencement;
- (b) where the injury was sustained after the commencement of the Government Railways and



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*Government Railways and Transport (Amendment).*

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and Transport (Amendment) Act, 1936—as soon as practicable after the injury was sustained but not in any such case later than six months after the beginning of the first period of incapacity resulting from the injury.

- (4) Where any such election is made,
- (a) the officer shall, as from the date of such election, cease to be entitled to payment of the salary at the rate ascertained under section 100B of this Act; and
  - (b) any amounts paid to such officer before such date by way of salary at the rate so ascertained shall where any sum becomes payable by the Commissioner for Railways as compensation (including the cost of medical or hospital treatment or ambulance service) or as damages be set off against such sum after making due allowance, in the case of any officer who had returned to duty before the date of such election, for any salary properly payable to such officer in respect of the duties of the classification in which he is employed after his return to duty and before the date of such election.

(5) Where any such officer has, before the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation against the Commissioner for Railways in respect of an injury received before such commencement the following provisions shall have effect:—

- (a) Where the officer concerned before such commencement, elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended), to accept an amount payable in accordance



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*Government Railways and Transport (Amendment).*

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accordance with the table to that section, such officer shall be excluded from the benefits of section 100B of this Act in respect of any period before the commencement of the Government Railways and Transport (Amendment) Act, 1936, but as from such commencement shall, notwithstanding the provisions of section forty-seven of the Workers' Compensation Act, 1926, as amended by subsequent Acts, be entitled to the benefits conferred by section 100B of this Act.

- (b) Where the officer concerned is, at the date of such commencement, receiving weekly payments by way of compensation, he may elect to abandon his claim to such weekly payments and to accept the benefits of section 100B of this Act, and if he does not so elect, within the time prescribed by paragraph (c) of this subsection, he shall be excluded from the benefits of section 100B of this Act.
- (c) Any election under this subsection shall be made in writing to such Commissioner as soon as practicable after such commencement and not in any case later than six months after such commencement.
- (d) Where any officer exercises the right of election under this subsection he shall, as soon as practicable thereafter, take any action necessary to carry into effect the abandonment of his claim to such weekly payments or to terminate any right to such weekly payments which may have accrued to him by reason of such claim, and the election shall not be deemed to have been completed until he has done so.
- (e) Where an election under this subsection has been completed the officer concerned shall

be



*Government Railways and Transport (Amendment).*

be paid such sum (if any) as represents the excess of the amount of salary at the appropriate rate ascertained in accordance with section 100B of this Act for the period ascertained in accordance with paragraph (f) of this subsection over the total of all amounts paid to or for the benefit of such officer in respect of such period, whether as weekly payments by way of compensation or as the cost of medical or hospital treatment or ambulance service, or as salary properly payable to such officer for the performance of the duties of the classification in which he is employed during such period.

(f) The period referred to in paragraph (e) of this subsection shall be—

(i) Where the officer concerned was injured less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936,—the period commencing on the date upon which he was injured and terminating on the date upon which the election under this subsection is completed.

(ii) Where the officer concerned was injured more than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, and was, at the beginning of the period of one year immediately before such commencement totally incapacitated as a result of such injury—the period commencing on the date upon which such total incapacity commenced and terminating on the date upon which the election under this subsection is completed.

(iii) In every other case—the period commencing on a date being one year before



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*Government Railways and Transport (Amendment).*

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before the date of the commencement of the Government Railways and Transport (Amendment) Act, 1936, and terminating on the date upon which the election under this subsection is completed.

Election between benefits under Part IX and right to compensation or damages against Commissioner.

100E. (1) An officer who—

- (a) is a contributor to the Government Railways Superannuation Account; and
- (b) has been incapacitated from the further discharge of his duties by injury arising out of and in the course of his employment, not being an injury caused by his own serious and wilful misconduct; and
- (c) by reason of such incapacity has been retired from or has otherwise left the railway service, after the commencement of the Government Railways and Transport (Amendment) Act, 1936,

shall be entitled to the benefits conferred by Part IX of this Act (other than the gratuity referred to in section one hundred and sixteen) and, in addition thereto, shall be entitled to make an election—

- (i) to claim the gratuity referred to in section one hundred and sixteen of this Act, in which case he shall not be entitled to make any other claim, whether for compensation or damages, against the Commissioner for Railways; or
- (ii) to make a claim for compensation, in which case he shall not be entitled to claim such gratuity or to make any claim for damages against such Commissioner; or
- (iii) to make a claim for damages against such Commissioner, in which case he shall not be entitled to make any claim against such Commissioner for compensation or to claim such gratuity:

**Provided**



*Government Railways and Transport (Amendment).*

Provided that, where the officer concerned has before being retired from or otherwise leaving the railway service and either before or after the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation, and has elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended) to accept an amount payable in accordance with the table to that section, such officer shall not be entitled to make any such election or to claim such gratuity or to make any claim for compensation or damages.

(2) Any such election may be made by notice in writing given to the Commissioner for Railways or by the institution of proceedings against such Commissioner for the recovery of compensation or damages.

(2) The Transport Act, 1930, as amended by subsequent Acts, is further amended by inserting next after section one hundred and twenty-four the following new sections:—

Further  
amendment of  
Act No. 18,  
1930.  
New sec. 124A.

124A. (1) Except as provided in subsection two of this section any officer who, after having been retired from or having otherwise left the transport service has been re-employed in such service, shall not, by reason of any incapacity resulting from injury received during his former period of employment, be entitled to payment of salary at a rate ascertained in accordance with section one hundred and twenty-four of this Act.

Re-  
employed  
officers.

(2) Where any officer who has been retired from or has otherwise left the transport service as a result of incapacity occasioned by injury arising out of and in the course of his employment, is re-employed in such service the following provisions shall have effect:—

(a) Where such officer was so re-employed by reason of having been required pursuant to section one hundred and nineteen of the Government



*Government Railways and Transport (Amendment).*

Government Railways Act, 1912-1934, to resume his duties or to undertake other duties he shall be entitled, while he remains in the transport service, to payment of salary at a rate ascertained in accordance with section one hundred and twenty-four of this Act.

- (b) Where such officer was so re-employed by reason of having been required by the Commissioner for Road Transport and Tramways to resume his duties or to undertake other duties, and at the date he was so re-employed was receiving weekly payments by way of compensation he shall, if he so elects, be entitled, while he remains in the transport service, to payment of salary at a rate ascertained in accordance with section one hundred and twenty-four of this Act.

Where any such officer does so elect he shall, as from the date of such election, cease to be entitled to such weekly payments by way of compensation.

Election between rights under sec. 124, and right to compensation or damages.

124B. (1) Where an officer has, pursuant to section one hundred and twenty-four of this Act, become entitled to payment of salary at a rate ascertained in accordance with that section, he shall, to the exclusion of any right while he remains in the transport service to compensation or damages against the Commissioner for Road Transport and Tramways, continue to be so entitled during incapacity attributable to the injury and while he remains in the transport service unless—

- (a) where the injury was sustained not less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, he elects to make a claim against the Commissioner for Road Transport and Tramways for compensation; or

(b)



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*Government Railways and Transport (Amendment).*

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- (b) where the injury was sustained within one year before or was sustained after such commencement he elects to make a claim against such Commissioner for compensation or damages; or
- (c) he is, by the operation of subsection five of this section excluded from the benefits of section one hundred and twenty-four of this Act.

(2) Any such election may be made by notice in writing given to the Commissioner for Road Transport and Tramways or by the institution of proceedings for the recovery of compensation or damages.

(3) Any such election shall be made—

- (a) where the injury was sustained before the commencement of the Government Railways and Transport (Amendment) Act, 1936—as soon as practicable after such commencement but not in any such case later than six months after—
  - (i) such commencement, where the officer concerned was incapacitated as a result of the injury at such commencement; or
  - (ii) the beginning of the first period of incapacity resulting from the injury where the officer concerned was not incapacitated as a result of the injury at such commencement.
- (b) where the injury was sustained after the commencement of the Government Railways and Transport (Amendment) Act, 1936—as soon as practicable after the injury was sustained, but not in any such case later than six months after the beginning of the first period of incapacity resulting from the injury.

(4).



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*Government Railways and Transport (Amendment).*

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(4) Where any such election is made—

- (a) the officer shall, as from the date of such election, cease to be entitled to payment of the salary at the rate ascertained under section one hundred and twenty-four of this Act; and
- (b) any amounts paid to such officer before such date by way of salary at the rate so ascertained shall where any sum becomes payable by the Commissioner for Road Transport and Tramways as compensation (including the cost of medical or hospital treatment or ambulance service) or as damages be set off against such sum, after making due allowance, in the case of any officer who had returned to duty before the date of such election, for any salary properly payable to such officer in respect of the duties of the classification in which he is employed after his return to duty and before the date of such election.

(5) Where any such officer has, before the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation against the Commissioner for Road Transport and Tramways in respect of an injury received before such commencement the following provisions shall have effect—

- (a) Where the officer concerned, before such commencement, elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended), to accept an amount payable in accordance with the table to that section, such officer shall be excluded from the benefits of section one hundred and twenty-four of this Act in respect of any period before the commencement of the Government Railways and Transport (Amendment) Act,

1936,



*Government Railways and Transport (Amendment).*

1936, but as from such commencement shall, notwithstanding the provisions of section forty-seven of the Workers' Compensation Act, 1926, as amended by subsequent Acts, be entitled to the benefits conferred by section one hundred and twenty-four of this Act.

- (b) Where the officer concerned is, at the date of such commencement, receiving weekly payments by way of compensation, he may elect to abandon his right to such weekly payments and to accept the benefits of section one hundred and twenty-four of this Act, and if he does not so elect within the time prescribed by paragraph (c) of this subsection he shall be excluded from the benefits of section one hundred and twenty-four of this Act.
- (c) Any election under this subsection shall be made in writing to such Commissioner as soon as practicable after such commencement and not in any case later than six months after such commencement.
- (d) Where any officer exercises the right of election under this subsection he shall, as soon as practicable thereafter, take any action necessary to carry into effect the abandonment of his claim to such weekly payments or to terminate any right to such weekly payments which may have accrued to him by reason of such claim, and the election shall not be deemed to have been completed until he has done so.
- (e) Where an election under this subsection has been completed the officer concerned shall be paid such sum (if any) as represents the excess of the amount of salary at the appropriate rate ascertained in accordance with section one hundred and twenty-four of this Act for the period ascertained in accordance with



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*Government Railways and Transport (Amendment).*

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with paragraph (f) of this subsection over the total of all amounts paid to or for the benefit of such officer in respect of such period, whether as weekly payments by way of compensation or as the cost of medical or hospital treatment or ambulance service, or as salary properly payable to such officer for the performance of the duties of the classification in which he is employed during such period.

(f) The period referred to in paragraph (e) of this subsection shall be—

- (i) Where the officer concerned was injured less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936—the period commencing on the date upon which he was injured and terminating on the date upon which the election under this subsection is completed.
- (ii) Where the officer concerned was injured more than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, and was, at the beginning of the period of one year immediately before such commencement totally incapacitated as a result of such injury—the period commencing on the date upon which such total incapacity commenced and terminating on the date upon which the election under this subsection is completed.
- (iii) In every other case—the period commencing on a date being one year before the date of the commencement of the Government Railways and Transport (Amendment) Act, 1936,  
and



*Government Railways and Transport (Amendment).*

and terminating on the date upon which the election under this subsection is completed.

124c. (1) An officer who—

- (a) is a contributor to the Government Railways Superannuation Account or to the State Superannuation Fund; and
- (b) has been incapacitated from the further discharge of his duties by injury arising out of and in the course of his employment, not being an injury caused by his own serious and wilful misconduct; and
- (c) by reason of such incapacity has been retired or has otherwise left the transport service after the commencement of the Government Railways and Transport (Amendment) Act, 1936,

Election between superannuation benefits, etc., and right to compensation or damages from Commissioner.

shall be entitled to the benefits conferred by Part IX of the Government Railways Act, 1912-1934 (other than the gratuity referred to in section one hundred and sixteen of that Act), or to the benefits conferred by the Superannuation Act, 1916-1935, as the case may be, and in addition thereto, shall be entitled to make an election—

- (i) where he is a contributor to the Government Railways Superannuation Account—
  - (a) to claim the gratuity referred to in section one hundred and sixteen of the Government Railways Act, 1912-1934, in which case he shall not be entitled to make any other claim, whether for compensation or damages, against the Commissioner for Road Transport and Tramways; or
  - (b) to make a claim for compensation, in which case he shall not be entitled to claim such gratuity or to make any claim for damages against such Commissioner; or
  - (c)



Government Railways and Transport (Amendment).

- (c) to make a claim for damages against such Commissioner, in which case he shall not be entitled to make any claim against such Commissioner for compensation or to claim such gratuity; or
- (ii) where he is a contributor to the State Superannuation Fund—
  - (a) to make a claim for compensation, in which case he shall not be entitled to make any claim for damages against such Commissioner; or
  - (b) to make a claim for damages against such Commissioner, in which case he shall not be entitled to make any claim against such Commissioner for compensation:

Provided that, where the officer concerned has, before being retired from or otherwise leaving the transport service and either before or after the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation, and has elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended) to accept an amount payable in accordance with the table to that section, such officer shall not be entitled to make any such election or to claim such gratuity or to make any claim for compensation or damages.

(2) Any such election may be made by notice in writing given to the Commissioner for Road Transport and Tramways, or by the institution of proceedings against such Commissioner for the recovery of compensation or damages.

5. (1) The Government Railways Act, 1912-1934, is further amended—

- (a) (i) by inserting in section one hundred and forty-three after the word "done" wherever occurring the words "or omitted";
- (ii)

Further  
amendment of  
Act No. 30,  
1912.  
Sec. 143.  
(Limitation  
of actions  
against Com-  
missioners.)



*Government Railways and Transport (Amendment).*

- (ii) by inserting in the same section after the words "the act" the words "or omission";
- (iii) by inserting at the end of the same section the words "or made";
- (b) by inserting in subsection one of section one hundred and forty-four after the word "done" wherever occurring the words "or omitted." Sec. 144.  
(Notice of action.)
- (2) The Transport Act, 1930, as amended by subsequent Acts, is further amended— Further amendment of Act No. 18, 1930.
  - (a) (i) by inserting in subsection two of section two hundred and thirty-two after the word "done" wherever occurring the words "or omitted"; Sec. 232.  
(Limitation of action.)
  - (ii) by inserting in the same subsection after the words "the act" the words "or omission";
  - (iii) by inserting at the end of the same subsection the words "or made";
  - (b) by inserting in subsection one of section two hundred and thirty-three after the word "done" wherever occurring the words "or omitted." Sec. 233.  
(Notice of action.)
  - (3) (a) Subsection one of this section shall be deemed to have commenced on the twenty-sixth day of November, one thousand nine hundred and twelve. Commencement of subsections one and two.
  - (b) Subsection two of this section shall be deemed to have commenced on the fifth day of August, one thousand nine hundred and thirty.
  - (4) Any alteration of the law made by this section shall not affect any action or proceeding concluded before the commencement of this Act. Saving.
- 6.** (1) The Government Railways Act, 1912-1934, is further amended by inserting at the end of section one hundred and three the following new paragraph:— Further amendment of Act No. 30, 1912.

This section shall not affect and shall be deemed never to have affected the operation of section 100B (whether as originally enacted or as inserted by the Government Railways and Transport (Amendment) Act, 1936) section 100c, section 100d, section 100E, section one hundred and forty-three, section one hundred and forty-four or section one hundred and forty-five of this Act. Sec. 103.  
(Right to sue.)



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*Government Railways and Transport (Amendment).*

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Further  
amendment  
of Act No.  
18, 1930.  
Sec. 125.  
(Right to  
sue.)

(2) The Transport Act, 1930, as amended by subsequent Acts, is further amended by inserting at the end of section one hundred and twenty-five the following new paragraph:—

This section shall not affect and shall be deemed never to have affected the operation of section one hundred and twenty-four (whether as originally enacted or as inserted by the Government Railways and Transport (Amendment) Act, 1936), section 124A, section 124B, section 124C, section two hundred and thirty-two, section two hundred and thirty-three or section two hundred and thirty-four of this Act.

Saving.

(3) Any alteration of the law made by this section shall not affect any action or proceeding concluded before the commencement of this Act.

*In the name and on behalf of His Majesty I assent to this Act.*

P. W. STREET,  
*Lieutenant-Governor.*

*Government House,  
Sydney, 22nd June, 1936.*











GOVERNMENT RAILWAYS AND TRANSPORT (AMENDMENT) BILL.

*SCHEDULE of the Amendments referred to in Message of 3rd June, 1936.*

- No. 1.—Page 3, clause 3, line 13. *After "had" insert "been"*  
No. 2.—Page 3, clause 3, line 13. *Omit "six" insert "four"*  
No. 3.—Page 3, clause 3, line 15. *Omit "six" insert "four"*  
No. 4.—Page 3, clause 3, line 17. *Omit "been"*  
No. 5.—Page 4, clause 3, line 12. *After "had" insert "been"*  
No. 6.—Page 4, clause 3, line 13. *Omit "six" insert "four"*  
No. 7.—Page 4, clause 3, line 15. *Omit "six" insert "four"*  
No. 8.—Page 4, clause 3, line 17. *Omit "been"*  
No. 9.—Page 4, clause 3. *After line 39 insert—*

**(4) In the case of any officer who was, before the commencement of this Act, incapacitated by injury arising out of and in the course of his employment (not being an injury caused by his own serious and wilful misconduct) and who is, as a result of such incapacity, immediately before such commencement, employed upon duties of a classification lower than the classification to which, at the date of the injury, he had been appointed, any alteration of the law made by this section shall not operate so as to reduce the salary of such officer to a rate less than the rate payable to him immediately before such commencement.**

- No. 10.—Page 6, clause 3, lines 24 and 25. *Omit "comment" insert "commencement"*  
No. 11.—Page 7, clause 4, line 37. *After "right" insert "while he remains in the railway service"*  
No. 12.—Page 9, clause 4, line 16. *After "compensation" insert "(including the cost of medical or hospital treatment or ambulance service) or as damages"*  
No. 13.—Page 9, clause 4, lines 27 to 30. *Omit "or (ii) where any sum becomes payable by such Commissioner as damages be set off against such sum."*  
No. 14.—Page 10, clause 4, line 5. *After "Act" insert "in respect of any period before the commencement of the Government Railways and Transport (Amendment) Act, 1936, but as from such commencement shall, notwithstanding the provisions of section forty-seven of the Workers' Compensation Act, 1926, as amended by subsequent Acts, be entitled to the benefits conferred by section 100B of this Act."*  
No. 15.—Page 11, clause 4, lines 23 to 25. *Omit "of the commencement of the Government Railways and Transport (Amendment) Act, 1936" insert "upon which the election under this subsection is completed."*  
No. 16.—Page 11, clause 4, lines 39 to 41 and page 12, line 1. *After "date" omit "of the commencement of the Government Railways and Transport (Amendment) Act, 1936" insert "upon which the election under this subsection is completed"*  
No. 17.—Page 12, clause 4, lines 4 and 5. *Omit "or one year immediately before" insert "commencing on a date being one year before the date of"*



- No. 18.—Page 12, clause 4, line 9. *After* “1936” *insert* **“and terminating on the date upon which the election under this subsection is completed”**
- No. 19.—Page 14, clause 4, line 32. *After* “right” *insert* **“while he remains in the transport service”**
- No. 20.—Page 16, clause 4, line 15. *After* “compensation” *insert* **“(including the cost of medical or hospital treatment or ambulance service) or as damages”**
- No. 21.—Page 16, clause 4, lines 27 to 30. *Omit* “or (ii) where any sum becomes payable to such Commissioner as damages be set off against such sum”
- No. 22.—Page 17, clause 4, line 5. *After* “Act” *insert* **“in respect of any period before the commencement of the Government Railways and Transport (Amendment) Act, 1936, but as from such commencement shall, notwithstanding the provisions of section forty-seven of the Workers’ Compensation Act, 1926, as amended by subsequent Acts, be entitled to the benefits conferred by section one hundred and twenty-four of this Act”**
- No. 23.—Page 18, clause 4, lines 27 to 29. *Omit* “of the commencement of the Government Railways and Transport (Amendment) Act, 1936,” *insert* **“upon which the election under this subsection is completed”**
- No. 24.—Page 19, clause 4, lines 2 to 4. *Omit* “of the commencement of the Government Railways and Transport (Amendment) Act, 1936,” *insert* **“upon which the election under this subsection is completed”**
- No. 25.—Page 19, clause 4, lines 7 and 8. *Omit* “of one year immediately before” *insert* **“commencing on a date being one year before the date of”**
- No. 26.—Page 19, clause 4, line 12. *After* “1936” *insert* **“and terminating on the date upon which the election under this subsection is completed”**



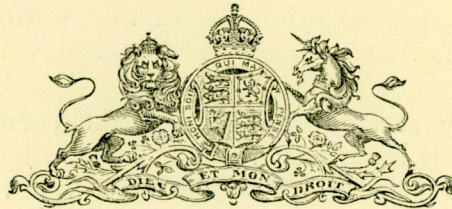
*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

W. R. McCOURT,  
*Clerk of the Legislative Assembly.*  
Legislative Assembly Chamber,  
Sydney, 19 May, 1936.

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.*

C. H. H. CALVERT,  
*Clerk of the Parliaments.*  
Legislative Council Chamber,  
Sydney, 3rd June, 1936.

## New South Wales.



ANNO PRIMO

## EDWARDI VIII REGIS.

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Act No. , 1936.

An Act to make certain provisions in relation to officers of the Department of Railways and of the Department of Road Transport and Tramways who have been incapacitated by injury; to amend the Government Railways Act, 1912-1934, the Transport Act, 1930, and certain other Acts in certain respects; to validate certain matters; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Government Rail- Short title.  
ways and Transport (Amendment) Act, 1936."

98951 39--A

2.

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter.



*Government Railways and Transport (Amendment).*

2. (1) The Government Railways Act, 1912-1934, is amended by omitting from section eighty-two the words "in the prescribed manner."

Amendment of  
Act No. 30,  
1912, s. 82.  
(Officers guilty  
of misconduct.)

(2) The Transport Act, 1930, as amended by subsequent Acts, is amended by omitting from section one hundred and nine the words "in the prescribed manner."

Amendment of  
Act No. 18,  
1930, s. 109.  
(Officers guilty  
of misconduct.)

(3) (a) Any action taken, before the commencement of this Act, by the officer at the head of any branch of the railway service which would have been valid if the amendment made by subsection one of this section had been in force at the time such action was taken, is hereby validated.

Validation  
of acts of  
heads of  
branches.

(b) Any action taken, before the commencement of this Act, by the officer at the head of any branch of the transport service which would have been valid if the amendment made by subsection two of this section had been in force at the time such action was taken, is hereby validated.

(4) Any alteration of the law made by this section shall not affect any action or proceeding concluded before the commencement of this Act.

Saving

(5) The Government Railways Act, 1912-1934, is further amended by inserting in section eighty-two after the words "dealt with" the words "shall be notified in writing of the nature of the misconduct charged or of the breach of rule, by-law or regulation alleged to have been committed and".

(6) The Transport Act, 1930, is further amended by inserting in section one hundred and nine after the words "dealt with" the words "shall be notified in writing of the nature of the misconduct charged or of the breach of rule or regulation alleged to have been committed and".

3. (1) The Government Railways Act, 1912-1934, is further amended by omitting section 100B and by inserting in lieu thereof the following section:—

Further  
amendment of  
Act No. 30,  
1912.  
Substituted  
sec. 100B.

100B. (1) Where an officer has been incapacitated by injury arising out of and in the course of his employment so as to be unable to perform the duties of the classification to which at the date of the injury he

Officer in-  
capacitated  
by injury.



*Government Railways and Transport (Amendment).*

he had been appointed, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity, not less than the salary for the time being payable to officers with the same classification and with the same length of service therein as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the railway service.

(2) Where an officer who has been incapacitated by injury arising out of and in the course of his employment was, at the date of such injury, and had **been**, for a continuous period of not less than ~~six~~ **four** months immediately preceding such date, or for periods amounting to ~~six~~ **four** months in the aggregate, during the period of twelve months immediately preceding such date ~~been~~ employed upon duties of a classification (in this subsection referred to as the "higher classification") carrying a higher salary than the classification to which at that date he had been appointed, and where the incapacity is such that such officer is by reason thereof unable to perform the duties of the higher classification, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity not less than the salary for the time being payable to officers performing duties in such higher classification (not being officers who have been appointed thereto) with the same length of service upon such duties as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the railway service.

(2) The Transport Act, 1930, as amended by subsequent Acts, is further amended by omitting section one hundred and twenty-four and by inserting in lieu thereof the following section:—

124. (1) Where an officer has been incapacitated by injury arising out of and in the course of his employment so as to be unable to perform the duties of the classification to which at the date of the injury

Further amendment of Act No. 18, 1930. Substituted sec. 124.

Officer incapacitated by injury.

he



*Government Railways and Transport (Amendment).*

5 he had been appointed, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity, not less than the salary for the time being payable to officers with the same classification and with the same length of service therein as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the transport service.

10 (2) Where an officer who has been incapacitated by injury arising out of and in the course of his employment was, at the date of such injury, and had **been**, for a continuous period of not less than ~~six~~ **four** months immediately preceding such date, or for  
15 periods amounting to ~~six~~ **four** months in the aggregate, during the period of twelve months immediately preceding such date, ~~been~~ employed upon duties of a classification (in this subsection referred to as the "higher classification") carrying a higher  
20 salary than the classification to which at that date he had been appointed, and where the incapacity is such that such officer is by reason thereof unable to perform the duties of the higher classification, he shall, except where such injury was caused by his  
25 own serious and wilful misconduct, be paid, during such incapacity, not less than the salary for the time being payable to officers performing duties in such higher classification (not being officers who have been appointed thereto) with the same length  
30 of service upon such duties as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the transport service.

(3) (a) Subsection one of this section shall be  
35 deemed to have commenced on the first day of January, one thousand nine hundred and seventeen.

Commence-  
ment of  
subsections  
one and  
two.

(b) Subsection two of this section shall be deemed to have commenced on the fifth day of August, one thousand nine hundred and thirty.

40 (4) In the case of any officer who was, before the commencement of this Act, incapacitated by injury arising out of



*Government Railways and Transport (Amendment).*

of and in the course of his employment (not being an injury caused by his own serious and wilful misconduct) and who is, as a result of such incapacity, immediately before such commencement, employed upon duties of a classification lower  
 5 than the classification to which, at the date of the injury, he had been appointed, any alteration of the law made by this section shall not operate so as to reduce the salary of such officer to a rate less than the rate payable to him immediately before such commencement.

10 (4) (5) Any alteration of the law made by this **Saving.** section shall not affect any action or proceeding concluded before the commencement of this Act.

(5) (6) Notwithstanding the retrospective effect given by subsection three of this section, to the amend-  
 15 ments made by subsections one and two of this section, no officer affected by section 100B of the Government Railways Act, 1912, or by section one hundred and twenty-four of the Transport Act, 1930 (as respectively inserted by this section) who has, in respect of any period before  
 20 the commencement of this Act, been paid salary at a rate less than the appropriate rate as ascertained in accordance with such sections, shall be entitled to any further payment in respect of any such period except as follows:—

25 (a) Where the officer concerned was not, at the commencement of this Act, in receipt of weekly payments by way of compensation he shall be paid such sum (if any) as represents the excess of the amount of salary at such appropriate rate for  
 30 the period ascertained in accordance with paragraph (b) of this subsection over the total of all amounts paid to or for the benefit of such officer in respect of such period, whether as weekly payments by way of compensation or as the cost  
 35 of medical or hospital treatment or ambulance service, or as salary properly payable to such officer for the performance of the duties of the classification in which he is employed during such period:

40 Provided that where the officer concerned has elected, pursuant to section sixteen of the  
 Workers'



*Government Railways and Transport (Amendment).*

Workers' Compensation Act, 1926 (whether as originally enacted or as amended) to accept an amount payable in accordance with the table to that section, he shall not be entitled to any payment under this paragraph.

(b) The period referred to in paragraph (a) of this subsection shall be—

(i) Where the officer concerned was injured less than one year before the commencement of this Act—the period commencing on the date upon which he was injured and terminating on the date of commencement of this Act;

(ii) Where the officer concerned was injured more than one year before the commencement of this Act and was, at the beginning of the period of one year before such commencement totally incapacitated as a result of such injury—the period commencing on the date upon which such total incapacity commenced and terminating on the date of the commencement of this Act;

(iii) In every other case—the period of twelve months immediately preceding the ~~comm~~ **commencement** of this Act.

(c) Where the officer concerned was, at the commencement of this Act, in receipt of weekly payments by way of compensation, and makes the election referred to in subsection five of section 100b of the Government Railways Act, 1912, or in subsection five of section 124b of the Transport Act, 1930 (as respectively inserted by this Act) he shall be paid such sum (if any) as is ascertained in accordance with the said subsections.

4. (1) The Government Railways Act, 1912-1934, is further amended by inserting next after section 100b the following new sections:—

100c. (1) Except as provided in subsection two of this section any officer who, after having been retired from or having otherwise left the railway service,

Further  
amendment of  
Act No. 30,  
1912.  
New secs.  
100c-100e.  
Re-  
employed  
officers.



*Government Railways and Transport (Amendment).*

service, has been re-employed in such service, shall not, by reason of any incapacity resulting from injury received during his former period of employment, be entitled to payment of salary at a rate ascertained in accordance with section 100B of this Act.

(2) Where any officer who has been retired from or has otherwise left the railway service as a result of incapacity occasioned by injury arising out of and in the course of his employment, is re-employed in such service the following provisions shall have effect—

(a) Where such officer was so re-employed by reason of having been required pursuant to section one hundred and nineteen of this Act to resume his duties or to undertake other duties, he shall be entitled while he remains in the railway service to payment of salary at a rate ascertained in accordance with section 100B of this Act.

(b) Where such officer was so re-employed by reason of having been required by the Commissioner for Railways to resume his duties or to undertake other duties, and, at the date upon which he was so re-employed, was receiving weekly payments by way of compensation he shall, if he so elects, be entitled while he remains in the railway service to payment of salary at a rate ascertained in accordance with section 100B of this Act.

Where any such officer does so elect he shall as from the date of such election cease to be entitled to such weekly payments by way of compensation.

100D. (1) Where an officer has, pursuant to section 100B of this Act, become entitled to payment of salary at a rate ascertained in accordance with that section, he shall, to the exclusion of any right **while he remains in the railway service** to compensation or damages against the Commissioner for Railways, **continue**

Election between rights under sec. 100B, and right to compensation or damages.



*Government Railways and Transport (Amendment).*

continue to be so entitled during incapacity attributable to the injury and while he remains in the railway service unless—

5

(a) where the injury was sustained not less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, he elects to make a claim against the Commissioner for Railways for compensation; or

10

(b) where the injury was sustained within one year before or was sustained after such commencement he elects to make a claim against such Commissioner for compensation or damages; or

15

(c) he is, by the operation of subsection five of this section excluded from the benefits of section 100B of this Act.

20

(2) Any such election may be made by notice in writing given to the Commissioner for Railways or by the institution of proceedings for the recovery of compensation or damages.

(3) Any such election shall be made—

25

(a) where the injury was sustained before the commencement of the Government Railways and Transport (Amendment) Act, 1936—as soon as practicable after such commencement but not in any such case later than six months after—

30

(i) such commencement, where the officer concerned was incapacitated as a result of the injury at such commencement; or

35

(ii) the beginning of the first period of incapacity resulting from the injury where the officer concerned was not incapacitated as a result of the injury at such commencement;

40

(b) where the injury was sustained after the commencement of the Government Railways and Transport (Amendment) Act, 1936—as

soon



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*Government Railways and Transport (Amendment).*

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soon as practicable after the injury was sustained but not in any such case later than six months after the beginning of the first period of incapacity resulting from the injury.

5

(4) Where any such election is made,

(a) the officer shall, as from the date of such election, cease to be entitled to payment of the salary at the rate ascertained under section 100B of this Act; and

10

(b) any amounts paid to such officer before such date by way of salary at the rate so ascertained shall—

15

(i) where any sum becomes payable by the Commissioner for Railways as compensation **(including the cost of medical or hospital treatment or ambulance service) or as damages** be set off against such sum after making due allowance, in the case of any officer who had returned to duty before the date of such election, for any salary properly payable to such officer in respect of the duties of the classification in which he is employed after his return to duty and before the date of such election. ~~or~~

20

25

(ii) ~~where any sum becomes payable by such Commissioner as damages be set off against such sum.~~

30

(5) Where any such officer has, before the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation against the Commissioner for Railways in respect of an injury received before such commencement the following provisions shall have effect:—

35

(a) Where the officer concerned before such commencement, elected, pursuant to section sixteen of the Workers' Compensation Act, 1926

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*Government Railways and Transport (Amendment).*

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- 5 1926 (whether as originally enacted or as amended), to accept an amount payable in accordance with the table to that section, such officer shall be excluded from the benefits of section 100B of this Act in re-  
10 spect of any period before the commencement of the Government Railways and Transport (Amendment) Act, 1936, but as from such commencement shall, notwithstanding the provisions of section forty-seven of the Workers' Compensation Act, 1926, as amended by subse-  
15 quent Acts, be entitled to the benefits conferred by section 100B of this Act.
- (b) Where the officer concerned is, at the date of such commencement, receiving weekly payments by way of compensation, he may elect to abandon his claim to such weekly payments and to accept the benefits of section 100B of this Act, and if he does not  
20 so elect, within the time prescribed by paragraph (c) of this subsection, he shall be excluded from the benefits of section 100B of this Act.
- (c) Any election under this subsection shall be made in writing to such Commissioner as soon as practicable after such commence-  
25 ment and not in any case later than six months after such commencement.
- (d) Where any officer exercises the right of election under this subsection he shall, as soon as practicable thereafter, take any action necessary to carry into effect the abandonment of his claim to such weekly payments or to terminate any right to such weekly payments which may have accrued  
30 to him by reason of such claim, and the election shall not be deemed to have been completed until he has done so.
- (e) Where an election under this subsection has been completed the officer concerned shall  
35 be paid such sum (if any) as represents the  
40 excess



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*Government Railways and Transport (Amendment).*

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excess of the amount of salary at the appropriate rate ascertained in accordance with section 100B of this Act for the period ascertained in accordance with paragraph (f) of this subsection over the total of all amounts paid to or for the benefit of such officer in respect of such period, whether as weekly payments by way of compensation or as the cost of medical or hospital treatment or ambulance service, or as salary properly payable to such officer for the performance of the duties of the classification in which he is employed during such period.

(f) The period referred to in paragraph (e) of this subsection shall be—

(i) Where the officer concerned was injured less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936,—the period commencing on the date upon which he was injured and terminating on the date of the commencement of the Government Railways and Transport (Amendment) Act, 1936: **upon which the election under this subsection is completed.**

(ii) Where the officer concerned was injured more than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, and was, at the beginning of the period of one year immediately before such commencement totally incapacitated as a result of such injury—the period commencing on the date upon which such total incapacity commenced and terminating on the date of the commencement of the Government Railways and Transport



*Government Railways and Transport (Amendment).*

Transport (Amendment) Act, 1936.  
upon which the election under this sub-  
section is completed.

5

(iii) In every other case—the period of  
one year immediately before com-  
mencing on a date being one year before  
the date of the commencement of the  
Government Railways and Transport  
(Amendment) Act, 1936, and terminat-  
ing on the date upon which the election  
under this subsection is completed.

10

100E. (1) An officer who—

15

(a) is a contributor to the Government Rail-  
ways Superannuation Account; and

(b) has been incapacitated from the further  
discharge of his duties by injury arising out  
of and in the course of his employment, not  
being an injury caused by his own serious  
and wilful misconduct; and

20

(c) by reason of such incapacity has been  
retired from or has otherwise left the rail-  
way service, after the commencement of the  
Government Railways and Transport  
(Amendment) Act, 1936,

25

shall be entitled to the benefits conferred by Part IX  
of this Act (other than the gratuity referred to in  
section one hundred and sixteen) and, in addition  
thereto, shall be entitled to make an election—

30

(i) to claim the gratuity referred to in section  
one hundred and sixteen of this Act, in which  
case he shall not be entitled to make any  
other claim, whether for compensation or  
damages, against the Commissioner for Rail-  
ways; or

35

(ii) to make a claim for compensation, in which  
case he shall not be entitled to claim such  
gratuity or to make any claim for damages  
against such Commissioner; or

(iii)

Election be-  
tween benefits  
under Part IX  
and right to  
compensation  
or damages  
against Com-  
missioner.



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*Government Railways and Transport (Amendment).*

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5 (iii) to make a claim for damages against such Commissioner, in which case he shall not be entitled to make any claim against such Commissioner for compensation or to claim such gratuity:

10 Provided that, where the officer concerned has before being retired from or otherwise leaving the railway service and either before or after the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation, and has elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended) to accept an amount payable in accordance with the table to that section, such officer shall not be entitled to make any such election or to claim such gratuity or to make any claim for compensation or damages.

20 (2) Any such election may be made by notice in writing given to the Commissioner for Railways or by the institution of proceedings against such Commissioner for the recovery of compensation or damages.

25 (2) The Transport Act, 1930, as amended by subsequent Acts, is further amended by inserting next after section one hundred and twenty-four the following new sections:—

Further amendment of Act No. 18, 1930.  
New sec. 124A.

30 124A. (1) Except as provided in subsection two of this section any officer who, after having been retired from or having otherwise left the transport service has been re-employed in such service, shall not, by reason of any incapacity resulting from injury received during his former period of employment, be entitled to payment of salary at a rate ascertained in accordance with section one hundred and twenty-four of this Act.

Re-employed officers.

35 (2) Where any officer who has been retired from or has otherwise left the transport service as a result of incapacity occasioned by injury arising out of



*Government Railways and Transport (Amendment).*

of and in the course of his employment, is re-employed in such service the following provisions shall have effect:—

5 (a) Where such officer was so re-employed by reason of having been required pursuant to section one hundred and nineteen of the Government Railways Act, 1912-1934, to resume his duties or to undertake other duties he shall be entitled, while he remains in the transport service, to payment of salary at a rate ascertained in accordance with section one hundred and twenty-four of this Act.

10 (b) Where such officer was so re-employed by reason of having been required by the Commissioner for Road Transport and Tramways to resume his duties or to undertake other duties, and at the date he was so re-employed was receiving weekly payments by way of compensation he shall, if he so elects, be entitled, while he remains in the transport service, to payment of salary at a rate ascertained in accordance with section one hundred and twenty-four of this Act.

20 Where any such officer does so elect he shall, as from the date of such election, cease to be entitled to such weekly payments by way of compensation.

25 124B. (1) Where an officer has, pursuant to section one hundred and twenty-four of this Act, become entitled to payment of salary at a rate ascertained in accordance with that section, he shall, to the exclusion of any right **while he remains in the transport service** to compensation or damages against the Commissioner for Road Transport and Tramways, continue to be so entitled during incapacity attributable to the injury and while he remains in the transport service unless—

30 (a) where the injury was sustained not less than one year before the commencement of the

Election between rights under sec. 124, and right to compensation or damages.



*Government Railways and Transport (Amendment).*

the Government Railways and Transport (Amendment) Act, 1936, he elects to make a claim against the Commissioner for Road Transport and Tramways for compensation; or

5

(b) where the injury was sustained within one year before or was sustained after such commencement he elects to make a claim against such Commissioner for compensation or damages; or

10

(c) he is, by the operation of subsection five of this section excluded from the benefits of section one hundred and twenty-four of this Act.

15

(2) Any such election may be made by notice in writing given to the Commissioner for Road Transport and Tramways or by the institution of proceedings for the recovery of compensation or damages.

20

(3) Any such election shall be made—

(a) where the injury was sustained before the commencement of the Government Railways and Transport (Amendment) Act, 1936—as soon as practicable after such commencement but not in any such case later than six months after—

25

(i) such commencement, where the officer concerned was incapacitated as a result of the injury at such commencement; or

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(ii) the beginning of the first period of incapacity resulting from the injury where the officer concerned was not incapacitated as a result of the injury at such commencement.

35

(b) where the injury was sustained after the commencement of the Government Railways and Transport (Amendment) Act, 1936—as soon as practicable after the injury was sustained, but not in any such case later than

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*Government Railways and Transport (Amendment).*

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than six months after the beginning of the first period of incapacity resulting from the injury.

(4) Where any such election is made—

- 5 (a) the officer shall, as from the date of such election, cease to be entitled to payment of the salary at the rate ascertained under section one hundred and twenty-four of this Act; and
- 10 (b) any amounts paid to such officer before such date by way of salary at the rate so ascertained shall—

15 (i) where any sum becomes payable by the Commissioner for Road Transport and Tramways as compensation **(including the cost of medical or hospital treatment or ambulance service) or as damages** be set off against such sum, after making due allowance, in the case of any officer who had returned to duty before the date of such election, for any salary properly payable to such officer in respect of the duties of the classification in which he is employed after his return to duty and before the date of such election. ~~or~~

20

25 (ii) ~~where any sum becomes payable by such Commissioner as damages be set off against such sum.~~

3

(5) Where any such officer has, before the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation against the Commissioner for Road Transport and Tramways in respect of an injury received before such commencement the following provisions shall have effect—

- 40 (a) Where the officer concerned, before such commencement, elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended),



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*Government Railways and Transport (Amendment).*

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- 5 amended), to accept an amount payable in  
accordance with the table to that section,  
such officer shall be excluded from the bene-  
fits of section one hundred and twenty-four  
of this Act **in respect of any period before**  
10 **the commencement of the Government Railways**  
**and Transport (Amendment) Act, 1936, but as**  
**from such commencement shall, notwithstanding**  
**the provisions of section forty-seven of the**  
**Workers' Compensation Act, 1926, as amended**  
**by subsequent Acts, be entitled to the benefits**  
**conferred by section one hundred and twenty-**  
**four of this Act.**
- 15 (b) Where the officer concerned is, at the date of  
such commencement, receiving weekly pay-  
ments by way of compensation, he may elect  
to abandon his right to such weekly pay-  
ments and to accept the benefits of section  
one hundred and twenty-four of this Act,  
20 and if he does not so elect within the time  
prescribed by paragraph (c) of this sub-  
section he shall be excluded from the bene-  
fits of section one hundred and twenty-four  
of this Act.
- 25 (c) Any election under this subsection shall be  
made in writing to such Commissioner as  
soon as practicable after such commence-  
ment and not in any case later than six  
months after such commencement.
- 30 (d) Where any officer exercises the right of  
election under this subsection he shall, as  
soon as practicable thereafter, take any  
action necessary to carry into effect the  
abandonment of his claim to such weekly  
35 payments or to terminate any right to  
such weekly payments which may have  
accrued to him by reason of such claim, and  
the election shall not be deemed to have been  
completed until he has done so.

(e)



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*Government Railways and Transport (Amendment).*

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- 5 (e) Where an election under this subsection has been completed the officer concerned shall be paid such sum (if any) as represents the excess of the amount of salary at the appropriate rate ascertained in accordance with section one hundred and twenty-four of this Act for the period ascertained in accordance with paragraph (f) of this subsection over the total of all amounts paid to or for the benefit of such officer in respect of such period, whether as weekly payments by way of compensation or as the cost of medical or hospital treatment or ambulance service, or as salary properly payable to such officer for the performance of the duties of the classification in which he is employed during such period.
- 10
- 15
- (f) The period referred to in paragraph (e) of this subsection shall be—
- 20 (i) Where the officer concerned was injured less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936—the period commencing on the date upon which he was injured and terminating on the date of the commencement of the Government Railways and Transport (Amendment) Act, 1936. **upon which the election under this subsection is completed.**
- 25
- 30
- (ii) Where the officer concerned was injured more than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, and was, at the beginning of the period of one year immediately before such commencement totally incapacitated as a result of such injury—the period commencing on the date upon which such total incapacity
- 35
- 40



*Government Railways and Transport (Amendment).*

incapacity commenced and terminating on the date of the commencement of the Government Railways and Transport (Amendment) Act, 1936, upon which the election under this subsection is completed.

(iii) In every other case—the period of one year immediately before commencing on a date being one year before the date of the commencement of the Government Railways and Transport (Amendment) Act, 1936 and terminating on the date upon which the election under this subsection is completed.

124c. (1) An officer who—

- (a) is a contributor to the Government Railways Superannuation Account or to the State Superannuation Fund; and
- (b) has been incapacitated from the further discharge of his duties by injury arising out of and in the course of his employment, not being an injury caused by his own serious and wilful misconduct; and
- (c) by reason of such incapacity has been retired or has otherwise left the transport service after the commencement of the Government Railways and Transport (Amendment) Act, 1936,

Election between superannuation benefits, etc., and right to compensation or damages from Commissioner.

shall be entitled to the benefits conferred by Part IX of the Government Railways Act, 1912-1934 (other than the gratuity referred to in section one hundred and sixteen of that Act), or to the benefits conferred by the Superannuation Act, 1916-1935, as the case may be, and in addition thereto, shall be entitled to make an election—

(i) where he is a contributor to the Government Railways Superannuation Account—

- (a) to claim the gratuity referred to in section one hundred and sixteen of the Government Railways Act, 1912-1934,

in



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*Government Railways and Transport (Amendment).*

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5 in which case he shall not be entitled to make any other claim, whether for compensation or damages, against the Commissioner for Road Transport and Tramways; or

10 (b) to make a claim for compensation, in which case he shall not be entitled to claim such gratuity or to make any claim for damages against such Commissioner; or

15 (c) to make a claim for damages against such Commissioner, in which case he shall not be entitled to make any claim against such Commissioner for compensation or to claim such gratuity; or

(ii) where he is a contributor to the State Superannuation Fund—

20 (a) to make a claim for compensation, in which case he shall not be entitled to make any claim for damages against such Commissioner; or

25 (b) to make a claim for damages against such Commissioner, in which case he shall not be entitled to make any claim against such Commissioner for compensation:

30 Provided that, where the officer concerned has, before being retired from or otherwise leaving the transport service and either before or after the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation, and has elected, pursuant to section sixteen of the Workers' Compensation Act, 1926  
35 (whether as originally enacted or as amended) to accept an amount payable in accordance with the table to that section, such officer shall not be entitled to make any such election or to claim such gratuity or to make any claim for compensation or damages.



Government Railways and Transport (Amendment).

(2) Any such election may be made by notice in writing given to the Commissioner for Road Transport and Tramways, or by the institution of proceedings against such Commissioner for the recovery of compensation or damages.

5     **5.** (1) The Government Railways Act, 1912-1934, is further amended—

- (a) (i) by inserting in section one hundred and forty-three after the word “done” wherever occurring the words “or omitted”;  
 10           (ii) by inserting in the same section after the words “the act” the words “or omission”;  
           (iii) by inserting at the end of the same section the words “or made”;
- 15     (b) by inserting in subsection one of section one hundred and forty-four after the word “done” wherever occurring the words “or omitted.”

Further amendment of Act No. 30, 1912.

Sec. 143.

(Limitation of actions against Commissioners.)

Sec. 144.

(Notice of action.)

(2) The Transport Act, 1930, as amended by subsequent Acts, is further amended—

- 20     (a) (i) by inserting in subsection two of section two hundred and thirty-two after the word “done” wherever occurring the words “or omitted”;
- 25           (ii) by inserting in the same subsection after the words “the act” the words “or omission”;
- (iii) by inserting at the end of the same subsection the words “or made”;
- (b) by inserting in subsection one of section two hundred and thirty-three after the word “done” wherever occurring the words “or omitted.”

Further amendment of Act No. 18, 1930.

Sec. 232.

(Limitation of action.)

Sec. 233.

(Notice of action.)

(3) (a) Subsection one of this section shall be deemed to have commenced on the twenty-sixth day of November, one thousand nine hundred and twelve.

Commencement of subsections one and two.

35     (b) Subsection two of this section shall be deemed to have commenced on the fifth day of August, one thousand nine hundred and thirty.

(4) Any alteration of the law made by this section shall not affect any action or proceeding concluded before the commencement of this Act.



*Government Railways and Transport (Amendment).*

**6.** (1) The Government Railways Act, 1912-1934, is further amended by inserting at the end of section one hundred and three the following new paragraph:—

Further amendment of Act No. 30, 1912.

5 This section shall not affect and shall be deemed never to have affected the operation of section 100B (whether as originally enacted or as inserted by the Government Railways and Transport (Amendment) Act, 1936) section 100c, section 100d, section 100E, section one hundred and forty-three, section one  
10 hundred and forty-four or section one hundred and forty-five of this Act.

Sec. 103.  
(Right to sue.)

(2) The Transport Act, 1930, as amended by subsequent Acts, is further amended by inserting at the end of section one hundred and twenty-five the following new  
15 paragraph:—

Further amendment of Act No. 18, 1930.

This section shall not affect and shall be deemed never to have affected the operation of section one hundred and twenty-four (whether as originally enacted or as inserted by the Government Railways and Transport (Amendment) Act, 1936), section  
20 124A, section 124B, section 124c, section two hundred and thirty-two, section two hundred and thirty-three or section two hundred and thirty-four of this Act.

Sec. 125.  
(Right to sue.)

(3) Any alteration of the law made by this section  
25 shall not affect any action or proceeding concluded before the commencement of this Act.

Saving.











*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY,  
and, having this day passed, is now ready for presentation to the  
LEGISLATIVE COUNCIL for its concurrence.*

W. R. McCOURT,  
*Clerk of the Legislative Assembly.*  
*Legislative Assembly Chamber,*  
*Sydney, 19 May, 1936.*

## New South Wales.



ANNO PRIMO

## EDWARDI VIII REGIS.

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Act No. , 1936.

An Act to make certain provisions in relation to officers of the Department of Railways and of the Department of Road Transport and Tramways who have been incapacitated by injury; to amend the Government Railways Act, 1912-1934, the Transport Act, 1930, and certain other Acts in certain respects; to validate certain matters; and for purposes connected therewith.

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Government Rail- Short title.  
ways and Transport (Amendment) Act, 1936."

98951 39--A

2.



*Government Railways and Transport (Amendment).*

2. (1) The Government Railways Act, 1912-1934, is amended by omitting from section eighty-two the words "in the prescribed manner."

Amendment of  
Act No. 30,  
1912, s. 82.  
(Officers guilty  
of misconduct.)

(2) The Transport Act, 1930, as amended by sub-  
5 quent Acts, is amended by omitting from section one  
hundred and nine the words "in the prescribed manner."

Amendment of  
Act No. 18,  
1930, s. 109.  
(Officers guilty  
of misconduct.)

(3) (a) Any action taken, before the commence-  
ment of this Act, by the officer at the head of any branch  
of the railway service which would have been valid if the  
10 amendment made by subsection one of this section had  
been in force at the time such action was taken, is hereby  
validated.

Validation  
of acts of  
heads of  
branches.

(b) Any action taken, before the commence-  
ment of this Act, by the officer at the head of any branch  
15 of the transport service which would have been valid if  
the amendment made by subsection two of this section  
had been in force at the time such action was taken, is  
hereby validated.

(4) Any alteration of the law made by this section  
20 shall not affect any action or proceeding concluded before  
the commencement of this Act.

Saving.

(5) The Government Railways Act, 1912-1934, is  
further amended by inserting in section eighty-two after  
the words "dealt with" the words "shall be notified in  
25 writing of the nature of the misconduct charged or of the  
breach of rule, by-law or regulation alleged to have been  
committed and".

(6) The Transport Act, 1930, is further amended  
by inserting in section one hundred and nine after the  
30 words "dealt with" the words "shall be notified in writing  
of the nature of the misconduct charged or of the breach of  
rule or regulation alleged to have been committed and".

3. (1) The Government Railways Act, 1912-1934, is  
further amended by omitting section 100B and by insert-  
35 ing in lieu thereof the following section:—

Further  
amendment of  
Act No. 30,  
1912.  
Substituted  
sec. 100B.

100B. (1) Where an officer has been incapacitated  
by injury arising out of and in the course of his  
employment so as to be unable to perform the duties  
of the classification to which at the date of the injury  
he

Officer in-  
capacitated  
by injury.



Government Railways and Transport (Amendment).

he had been appointed, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity, not less than the salary for the time being payable to officers with the same classification and with the same length of service therein as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the railway service.

(2) Where an officer who has been incapacitated by injury arising out of and in the course of his employment was, at the date of such injury, and had, for a continuous period of not less than six months immediately preceding such date, or for periods amounting to six months in the aggregate, during the period of twelve months immediately preceding such date been employed upon duties of a classification (in this subsection referred to as the "higher classification") carrying a higher salary than the classification to which at that date he had been appointed, and where the incapacity is such that such officer is by reason thereof unable to perform the duties of the higher classification, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity not less than the salary for the time being payable to officers performing duties in such higher classification (not being officers who have been appointed thereto) with the same length of service upon such duties as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the railway service.

(2) The Transport Act, 1930, as amended by subsequent Acts, is further amended by omitting section one hundred and twenty-four and by inserting in lieu thereof the following section:—

124. (1) Where an officer has been incapacitated by injury arising out of and in the course of his employment so as to be unable to perform the duties of the classification to which at the date of the injury

Further amendment of Act No. 18, 1930. Substituted sec. 124.

Officer incapacitated by injury.

he



*Government Railways and Transport (Amendment).*

he had been appointed, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity, not less than the salary for the time being payable to officers with the same classification and with the same length of service therein as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the transport service.

(2) Where an officer who has been incapacitated by injury arising out of and in the course of his employment was, at the date of such injury, and had, for a continuous period of not less than six months immediately preceding such date, or for periods amounting to six months in the aggregate, during the period of twelve months immediately preceding such date, been employed upon duties of a classification (in this subsection referred to as the "higher classification") carrying a higher salary than the classification to which at that date he had been appointed, and where the incapacity is such that such officer is by reason thereof unable to perform the duties of the higher classification, he shall, except where such injury was caused by his own serious and wilful misconduct, be paid, during such incapacity, not less than the salary for the time being payable to officers performing duties in such higher classification (not being officers who have been appointed thereto) with the same length of service upon such duties as such officer had at the date he received the injury, but such salary shall cease to be payable when such officer is retired from or otherwise leaves the transport service.

(3) (a) Subsection one of this section shall be deemed to have commenced on the first day of January, one thousand nine hundred and seventeen.

Commencement of subsections one and two.

(b) Subsection two of this section shall be deemed to have commenced on the fifth day of August, one thousand nine hundred and thirty.

(4) Any alteration of the law made by this section shall not affect any action or proceeding concluded before the commencement of this Act.

Saving.

(5)



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*Government Railways and Transport (Amendment).*

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(5) Notwithstanding the retrospective effect given by subsection three of this section, to the amendments made by subsections one and two of this section, no officer affected by section 100B of the Government Railways Act, 1912, or by section one hundred and twenty-four of the Transport Act, 1930 (as respectively inserted by this section) who has, in respect of any period before the commencement of this Act, been paid salary at a rate less than the appropriate rate as ascertained in accordance with such sections, shall be entitled to any further payment in respect of any such period except as follows:—

(a) Where the officer concerned was not, at the commencement of this Act, in receipt of weekly payments by way of compensation he shall be paid such sum (if any) as represents the excess of the amount of salary at such appropriate rate for the period ascertained in accordance with paragraph (b) of this subsection over the total of all amounts paid to or for the benefit of such officer in respect of such period, whether as weekly payments by way of compensation or as the cost of medical or hospital treatment or ambulance service, or as salary properly payable to such officer for the performance of the duties of the classification in which he is employed during such period:

Provided that where the officer concerned has elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended) to accept an amount payable in accordance with the table to that section, he shall not be entitled to any payment under this paragraph.

(b) The period referred to in paragraph (a) of this subsection shall be—

(i) Where the officer concerned was injured less than one year before the commencement of this Act—the period commencing on the date upon which he was injured and terminating on the date of commencement of this Act;

(ii)



Government Railways and Transport (Amendment).

- 5 (ii) Where the officer concerned was injured more than one year before the commencement of this Act and was, at the beginning of the period of one year before such commencement totally incapacitated as a result of such injury—the period commencing on the date upon which such total incapacity commenced and terminating on the date of the commencement of this Act;
- 10 (iii) In every other case—the period of twelve months immediately preceding the comment of this Act.
- 15 (c) Where the officer concerned was, at the commencement of this Act, in receipt of weekly payments by way of compensation, and makes the election referred to in subsection five of section 100D of the Government Railways Act, 1912, or in subsection five of section 124B of the Transport Act, 1930 (as respectively inserted by this
- 20 Act) he shall be paid such sum (if any) as is ascertained in accordance with the said subsections.

4. (1) The Government Railways Act, 1912-1934, is further amended by inserting next after section 100B the following new sections:—

25 100c. (1) Except as provided in subsection two of this section any officer who, after having been retired from or having otherwise left the railway service, has been re-employed in such service, shall not, by reason of any incapacity resulting from injury received during his former period of employment, be entitled to payment of salary at a rate ascertained in accordance with section 100B of this Act.

35 (2) Where any officer who has been retired from or has otherwise left the railway service as a result of incapacity occasioned by injury arising out of and in the course of his employment, is re-employed in such service the following provisions shall have effect—

40 (a) Where such officer was so re-employed by reason of having been required pursuant to section

Further amendment of Act No. 30, 1912. New secs. 100c-100e. Re-employed officers.



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*Government Railways and Transport (Amendment).*

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section one hundred and nineteen of this Act to resume his duties or to undertake other duties, he shall be entitled while he remains in the railway service to payment of salary at a rate ascertained in accordance with section 100B of this Act.

- (b) Where such officer was so re-employed by reason of having been required by the Commissioner for Railways to resume his duties or to undertake other duties, and, at the date upon which he was so re-employed, was receiving weekly payments by way of compensation he shall, if he so elects, be entitled while he remains in the railway service to payment of salary at a rate ascertained in accordance with section 100B of this Act.

Where any such officer does so elect he shall as from the date of such election cease to be entitled to such weekly payments by way of compensation.

100D. (1) Where an officer has, pursuant to section 100B of this Act, become entitled to payment of salary at a rate ascertained in accordance with that section, he shall, to the exclusion of any right to compensation or damages against the Commissioner for Railways, continue to be so entitled during incapacity attributable to the injury and while he remains in the railway service unless—

Election between rights under sec. 100B, and right to compensation or damages.

- (a) where the injury was sustained not less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, he elects to make a claim against the Commissioner for Railways for compensation; or
- (b) where the injury was sustained within one year before or was sustained after such commencement he elects to make a claim against such Commissioner for compensation or damages; or
- (c) he is, by the operation of subsection five of this section excluded from the benefits of section 100B of this Act. (2)



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*Government Railways and Transport (Amendment).*

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(2) Any such election may be made by notice in writing given to the Commissioner for Railways or by the institution of proceedings for the recovery of compensation or damages.

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(3) Any such election shall be made—

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(a) where the injury was sustained before the commencement of the Government Railways and Transport (Amendment) Act, 1936—as soon as practicable after such commencement but not in any such case later than six months after—

15

(i) such commencement, where the officer concerned was incapacitated as a result of the injury at such commencement; or

20

(ii) the beginning of the first period of incapacity resulting from the injury where the officer concerned was not incapacitated as a result of the injury at such commencement;

25

(b) where the injury was sustained after the commencement of the Government Railways and Transport (Amendment) Act, 1936—as soon as practicable after the injury was sustained but not in any such case later than six months after the beginning of the first period of incapacity resulting from the injury.

30

(4) Where any such election is made,

(a) the officer shall, as from the date of such election, cease to be entitled to payment of the salary at the rate ascertained under section 100B of this Act; and

35

(b) any amounts paid to such officer before such date by way of salary at the rate so ascertained shall—

(i) where any sum becomes payable by the Commissioner for Railways as compensation be set off against such sum



*Government Railways and Transport (Amendment).*

5 sum after making due allowance, in the case of any officer who had returned to duty before the date of such election, for any salary properly payable to such officer in respect of the duties of the classification in which he is employed after his return to duty and before the date of such election; or

10 (ii) where any sum becomes payable by such Commissioner as damages be set off against such sum.

15 (5) Where any such officer has, before the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation against the Commissioner for Railways in respect of an injury received before such commencement the following provisions shall have effect:—

20 (a) Where the officer concerned before such commencement, elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended), to accept an amount payable in  
25 accordance with the table to that section, such officer shall be excluded from the benefits of section 100B of this Act.

30 (b) Where the officer concerned is, at the date of such commencement, receiving weekly payments by way of compensation, he may elect to abandon his claim to such weekly payments and to accept the benefits of section 100B of this Act, and if he does not  
35 so elect, within the time prescribed by paragraph (c) of this subsection, he shall be excluded from the benefits of section 100B of this Act.

(c) Any election under this subsection shall be made in writing to such Commissioner as soon



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*Government Railways and Transport (Amendment).*

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soon as practicable after such commencement and not in any case later than six months after such commencement.

5 (d) Where any officer exercises the right of election under this subsection he shall, as soon as practicable thereafter, take any action necessary to carry into effect the abandonment of his claim to such weekly payments or to terminate any right to such weekly payments which may have accrued to him by reason of such claim, and the election shall not be deemed to have been completed until he has done so.

10  
15 (e) Where an election under this subsection has been completed the officer concerned shall be paid such sum (if any) as represents the excess of the amount of salary at the appropriate rate ascertained in accordance with section 100B of this Act for the period ascertained in accordance with paragraph (f) of this subsection over the total of all amounts paid to or for the benefit of such officer in respect of such period, whether as weekly payments by way of compensation or as the cost of medical or hospital treatment or ambulance service, or as salary properly payable to such officer for the performance of the duties of the classification in which he is employed during such period.

20  
25  
30 (f) The period referred to in paragraph (e) of this subsection shall be—

(i) Where the officer concerned was injured less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936,—the period commencing on the date upon which he was injured and terminating on the date of the commencement of the Government Railways and Transport (Amendment) Act, 1936.

(ii)



Government Railways and Transport (Amendment).

- (ii) Where the officer concerned was injured more than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, and was, at the beginning of the period of one year immediately before such commencement totally incapacitated as a result of such injury—the period commencing on the date upon which such total incapacity commenced and terminating on the date of the commencement of the Government Railways and Transport (Amendment) Act, 1936.
- (iii) In every other case—the period of one year immediately before the commencement of the Government Railways and Transport (Amendment) Act, 1936.

100E. (1) An officer who—

- (a) is a contributor to the Government Railways Superannuation Account; and
- (b) has been incapacitated from the further discharge of his duties by injury arising out of and in the course of his employment, not being an injury caused by his own serious and wilful misconduct; and
- (c) by reason of such incapacity has been retired from or has otherwise left the railway service, after the commencement of the Government Railways and Transport (Amendment) Act, 1936,

shall be entitled to the benefits conferred by Part IX of this Act (other than the gratuity referred to in section one hundred and sixteen) and, in addition thereto, shall be entitled to make an election—

- (i) to claim the gratuity referred to in section one hundred and sixteen of this Act, in which case he shall not be entitled to make any other

Election between benefits under Part IX and right to compensation or damages against Commissioner.



Government Railways and Transport (Amendment).

other claim, whether for compensation or damages, against the Commissioner for Railways; or

5 (ii) to make a claim for compensation, in which case he shall not be entitled to claim such gratuity or to make any claim for damages against such Commissioner; or

10 (iii) to make a claim for damages against such Commissioner, in which case he shall not be entitled to make any claim against such Commissioner for compensation or to claim such gratuity:

15 Provided that, where the officer concerned has before being retired from or otherwise leaving the railway service and either before or after the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation, and has elected, pursuant to section sixteen of the Workers' Compensation Act, 1926  
20 (whether as originally enacted or as amended) to accept an amount payable in accordance with the table to that section, such officer shall not be entitled to make any such election or to claim such gratuity or to make any claim for compensation or damages.

25 (2) Any such election may be made by notice in writing given to the Commissioner for Railways or by the institution of proceedings against such Commissioner for the recovery of compensation or damages.

30 (2) The Transport Act, 1930, as amended by subsequent Acts, is further amended by inserting next after section one hundred and twenty-four the following new sections:—

Further amendment of Act No. 18, 1930.  
New sec. 124A.

35 124A. (1) Except as provided in subsection two of this section any officer who, after having been retired from or having otherwise left the transport service has been re-employed in such service, shall not, by reason of any incapacity resulting from injury received during his former period

Re-employed officers.



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*Government Railways and Transport (Amendment).*

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period of employment, be entitled to payment of salary at a rate ascertained in accordance with section one hundred and twenty-four of this Act.

5 (2) Where any officer who has been retired from or has otherwise left the transport service as a result of incapacity occasioned by injury arising out of and in the course of his employment, is re-employed in such service the following provisions shall have effect:—

10 (a) Where such officer was so re-employed by reason of having been required pursuant to section one hundred and nineteen of the Government Railways Act, 1912-1934, to resume his duties or to undertake other duties  
15 he shall be entitled, while he remains in the transport service, to payment of salary at a rate ascertained in accordance with section one hundred and twenty-four of this Act.

20 (b) Where such officer was so re-employed by reason of having been required by the Commissioner for Road Transport and Tramways to resume his duties or to undertake other duties, and at the date he was so re-employed was receiving weekly payments by way of  
25 compensation he shall, if he so elects, be entitled, while he remains in the transport service, to payment of salary at a rate ascertained in accordance with section one hundred and twenty-four of this Act.

30 Where any such officer does so elect he shall, as from the date of such election, cease to be entitled to such weekly payments by way of compensation.

35 124B. (1) Where an officer has, pursuant to section one hundred and twenty-four of this Act, become entitled to payment of salary at a rate ascertained in accordance with that section, he shall, to the exclusion of any right to compensation or damages against the Commissioner for Road Transport and Tramways

Election between rights under sec. 124, and right to compensation or damages.



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*Government Railways and Transport (Amendment).*

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Tramways, continue to be so entitled during incapacity attributable to the injury and while he remains in the transport service unless—

5 (a) where the injury was sustained not less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, he elects to make a claim against the Commissioner for Road Transport and Tramways for compensa-  
10 tion; or

(b) where the injury was sustained within one year before or was sustained after such commencement he elects to make a claim against such Commissioner for compensa-  
15 tion or damages; or

(c) he is, by the operation of subsection five of this section excluded from the benefits of section one hundred and twenty-four of this Act.

20 (2) Any such election may be made by notice in writing given to the Commissioner for Road Transport and Tramways or by the institution of proceedings for the recovery of compensation or damages.

25 (3) Any such election shall be made—

(a) where the injury was sustained before the commencement of the Government Railways and Transport (Amendment) Act, 1936—as soon as practicable after such commence-  
30 ment but not in any such case later than six months after—

(i) such commencement, where the officer concerned was incapacitated as a result of the injury at such commence-  
35 ment; or

(ii) the beginning of the first period of incapacity resulting from the injury where the officer concerned was not incapacitated as a result of the injury  
40 at such commencement.

(b)



*Government Railways and Transport (Amendment).*

5 (b) where the injury was sustained after the commencement of the Government Railways and Transport (Amendment) Act, 1936—as soon as practicable after the injury was sustained, but not in any such case later than six months after the beginning of the first period of incapacity resulting from the injury.

(4) Where any such election is made—

10 (a) the officer shall, as from the date of such election, cease to be entitled to payment of the salary at the rate ascertained under section one hundred and twenty-four of this Act; and

15 (b) any amounts paid to such officer before such date by way of salary at the rate so ascertained shall—

20 (i) where any sum becomes payable by the Commissioner for Road Transport and Tramways as compensation be set off against such sum, after making due allowance, in the case of any officer who had returned to duty before the date of such election, for any salary properly payable to such officer in respect of the duties of the classification in which he is employed after his return to duty and before the date of such election; or

30 (ii) where any sum becomes payable by such Commissioner as damages be set off against such sum.

35 (5) Where any such officer has, before the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation against the Commissioner for Road Transport



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*Government Railways and Transport (Amendment).*

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Transport and Tramways in respect of an injury received before such commencement the following provisions shall have effect—

- 5 (a) Where the officer concerned, before such commencement, elected, pursuant to section sixteen of the Workers' Compensation Act, 1926 (whether as originally enacted or as amended), to accept an amount payable in accordance with the table to that section, such officer shall be excluded from the benefits of section one hundred and twenty-four of this Act.
- 10
- 15 (b) Where the officer concerned is, at the date of such commencement, receiving weekly payments by way of compensation, he may elect to abandon his right to such weekly payments and to accept the benefits of section one hundred and twenty-four of this Act, and if he does not so elect within the time prescribed by paragraph (c) of this subsection he shall be excluded from the benefits of section one hundred and twenty-four of this Act.
- 20
- 25 (c) Any election under this subsection shall be made in writing to such Commissioner as soon as practicable after such commencement and not in any case later than six months after such commencement.
- 30 (d) Where any officer exercises the right of election under this subsection he shall, as soon as practicable thereafter, take any action necessary to carry into effect the abandonment of his claim to such weekly payments or to terminate any right to such weekly payments which may have accrued to him by reason of such claim, and the election shall not be deemed to have been completed until he has done so.
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(e)



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*Government Railways and Transport (Amendment).*

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- 5 (e) Where an election under this subsection has been completed the officer concerned shall be paid such sum (if any) as represents the excess of the amount of salary at the appropriate rate ascertained in accordance with section one hundred and twenty-four of this Act for the period ascertained in accordance with paragraph (f) of this subsection over the total of all amounts paid to or for the benefit of such officer in respect of such period, whether as weekly payments by way of compensation or as the cost of medical or hospital treatment or ambulance service, or as salary properly payable to such officer for the performance of the duties of the classification in which he is employed during such period.
- 10
- 15
- (f) The period referred to in paragraph (e) of this subsection shall be—
- 20 (i) Where the officer concerned was injured less than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936—the period commencing on the date upon which he was injured and terminating on the date of the commencement of the Government Railways and Transport (Amendment) Act, 1936.
- 25
- 30 (ii) Where the officer concerned was injured more than one year before the commencement of the Government Railways and Transport (Amendment) Act, 1936, and was, at the beginning of the period of one year immediately before such commencement totally incapacitated as a result of such injury—the period commencing on the date upon which such total
- 35
- 39—B incapacity



*Government Railways and Transport (Amendment).*

incapacity commenced and terminating on the date of the commencement of the Government Railways and Transport (Amendment) Act, 1936.

(iii) In every other case—the period of one year immediately before the commencement of the Government Railways and Transport (Amendment) Act, 1936.

124c. (1) An officer who—

(a) is a contributor to the Government Railways Superannuation Account or to the State Superannuation Fund; and

(b) has been incapacitated from the further discharge of his duties by injury arising out of and in the course of his employment, not being an injury caused by his own serious and wilful misconduct; and

(c) by reason of such incapacity has been retired or has otherwise left the transport service after the commencement of the Government Railways and Transport (Amendment) Act, 1936,

shall be entitled to the benefits conferred by Part IX of the Government Railways Act, 1912-1934 (other than the gratuity referred to in section one hundred and sixteen of that Act), or to the benefits conferred by the Superannuation Act, 1916-1935, as the case may be, and in addition thereto, shall be entitled to make an election—

(i) where he is a contributor to the Government Railways Superannuation Account—

(a) to claim the gratuity referred to in section one hundred and sixteen of the Government Railways Act, 1912-1934, in which case he shall not be entitled to make any other claim, whether for compensation or damages, against the Commissioner for Road Transport and Tramways; or

(b)

Election between superannuation benefits, etc., and right to compensation or damages from Commissioner.



*Government Railways and Transport (Amendment).*

- 5 (b) to make a claim for compensation, in which case he shall not be entitled to claim such gratuity or to make any claim for damages against such Commissioner; or
- 10 (c) to make a claim for damages against such Commissioner, in which case he shall not be entitled to make any claim against such Commissioner for compensation or to claim such gratuity; or
- (ii) where he is a contributor to the State Superannuation Fund—
- 15 (a) to make a claim for compensation, in which case he shall not be entitled to make any claim for damages against such Commissioner; or
- 20 (b) to make a claim for damages against such Commissioner, in which case he shall not be entitled to make any claim against such Commissioner for compensation:

25 Provided that, where the officer concerned has, before being retired from or otherwise leaving the transport service and either before or after the commencement of the Government Railways and Transport (Amendment) Act, 1936, made a claim for compensation, and has elected, pursuant to section sixteen of the Workers' Compensation Act, 1926

30 (whether as originally enacted or as amended) to accept an amount payable in accordance with the table to that section, such officer shall not be entitled to make any such election or to claim such gratuity or to make any claim for compensation or damages.

35 (2) Any such election may be made by notice in writing given to the Commissioner for Road Transport and Tramways, or by the institution of proceedings against such Commissioner for the recovery of compensation or damages.



Government Railways and Transport (Amendment).

5. (1) The Government Railways Act, 1912-1934, is further amended—

Further amendment of Act No. 30, 1912.

- (a) (i) by inserting in section one hundred and forty-three after the word "done" wherever occurring the words "or omitted";
- (ii) by inserting in the same section after the words "the act" the words "or omission";
- (iii) by inserting at the end of the same section the words "or made";

Sec. 143.

(Limitation of actions against Commissioners.)

- (b) by inserting in subsection one of section one hundred and forty-four after the word "done" wherever occurring the words "or omitted."

Sec. 144.

(Notice of action.)

(2) The Transport Act, 1930, as amended by subsequent Acts, is further amended—

Further amendment of Act No. 18, 1930.

- 15 (a) (i) by inserting in subsection two of section two hundred and thirty-two after the word "done" wherever occurring the words "or omitted";

Sec. 232.

(Limitation of action.)

- (ii) by inserting in the same subsection after the words "the act" the words "or omission";

20

- (iii) by inserting at the end of the same subsection the words "or made";

- (b) by inserting in subsection one of section two hundred and thirty-three after the word "done" wherever occurring the words "or omitted."

Sec. 233.

(Notice of action.)

- 25 (3) (a) Subsection one of this section shall be deemed to have commenced on the twenty-sixth day of November, one thousand nine hundred and twelve.

Commencement of subsections one and two.

- (b) Subsection two of this section shall be deemed to have commenced on the fifth day of August, one thousand nine hundred and thirty.

30

- (4) Any alteration of the law made by this section shall not affect any action or proceeding concluded before the commencement of this Act.

Saving.

35 6. (1) The Government Railways Act, 1912-1934, is further amended by inserting at the end of section one hundred and three the following new paragraph:—

Further amendment of Act No. 30, 1912.

This section shall not affect and shall be deemed never to have affected the operation of section 100B (whether as originally enacted or as inserted by the

Sec. 103.

(Right to sue.)

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Government



Government Railways and Transport (Amendment).

Government Railways and Transport (Amendment) Act, 1936) section 100c, section 100d, section 100e, section one hundred and forty-three, section one hundred and forty-four or section one hundred and forty-five of this Act.

5

(2) The Transport Act, 1930, as amended by subsequent Acts, is further amended by inserting at the end of section one hundred and twenty-five the following new paragraph:—

Further amendment of Act No. 18, 1930. Sec. 125. (Right to sue.)

10

This section shall not affect and shall be deemed never to have affected the operation of section one hundred and twenty-four (whether as originally enacted or as inserted by the Government Railways and Transport (Amendment) Act, 1936), section 124A, section 124B, section 124C, section two hundred and thirty-two, section two hundred and thirty-three or section two hundred and thirty-four of this Act.

15

(3) Any alteration of the law made by this section shall not affect any action or proceeding concluded before the commencement of this Act.

Saving.

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Act No. 1073

21

AN ACT TO AMEND THE ACTS RELATIVE TO THE

REGISTRATION OF DEEDS AND TO REPEAL ACTS

IN CONFLICT THEREWITH.

SECTION 1. The following sections of the Acts

relative to the registration of deeds, to-wit:

SECTION 2. The following sections of the Acts

relative to the registration of deeds, to-wit:

SECTION 3. The following sections of the Acts

relative to the registration of deeds, to-wit:

SECTION 4. The following sections of the Acts

relative to the registration of deeds, to-wit:

SECTION 5. The following sections of the Acts

relative to the registration of deeds, to-wit:

SECTION 6. The following sections of the Acts

relative to the registration of deeds, to-wit:

SECTION 7. The following sections of the Acts

relative to the registration of deeds, to-wit:

SECTION 8. The following sections of the Acts

relative to the registration of deeds, to-wit:

SECTION 9. The following sections of the Acts

relative to the registration of deeds, to-wit:

SECTION 10. The following sections of the Acts

relative to the registration of deeds, to-wit:

SECTION 11. The following sections of the Acts

relative to the registration of deeds, to-wit:

SECTION 12. The following sections of the Acts

relative to the registration of deeds, to-wit:



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