

An Act to authorise John Mitchell Purves, of Sydney, in the Colony of New South Wales, gentleman, his heirs, executors, administrators, and assigns, to construct and maintain a Tramway from a point on the Darling River, at or near the Town of Menindie, in the Colony aforesaid, to a point at or near the Town of Willyama (Broken Hill), in the Colony aforesaid, and connecting with the Tramway system of the Broken Hill Mines; and to use horse, steam, or other motive power upon the said Tramway, and to carry passengers, ores, minerals, metals, coal, coke, timber, and other goods and materials, and live stock thereon. [13th June, 1893.]

MENINDIE  
AND BROKEN HILL  
TRAMWAY.

**W**HIEREAS it would be beneficial to the inhabitants of the Towns Preamble. of Menindie and Willyama (Broken Hill), in the Colony of New South Wales, and surrounding districts, to be connected by tramway, and to the trade of the said Colony that such a connecting tramway should be constructed, starting from a point at or near the town of Menindie: And whereas it is believed that there are large deposits of low-grade silver ores in the mines at Broken Hill which can be economically and profitably treated only by means of an abundant and permanent supply of water and fuel such as may be obtained from and at the Darling River, near the town of Menindie aforesaid: And whereas the said John Mitchell Purves is desirous of constructing a single or double tramway for horse, steam, or other traction, over, across, and along the lands described in the First Schedule hereto: And whereas such tramway cannot be made without Legislative authority: And whereas it is expedient to authorise, by Legislative enactment,

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enactment, the construction and maintenance of the said proposed tramway, subject to the provisions hereinafter contained: And whereas it is expedient that power should be conferred upon the said John Mitchell Purves, his heirs, executors, and administrators to transfer and assign the rights, powers, authorities, obligations, and liabilities under this Act to any company duly incorporated for that purpose: Be it therefore enacted by the Queen'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:—

## PART I.

*Preliminary—Powers and duties of the Promoter.*

Short title.

1. This Act may for all purposes be cited as the "Menindie and Broken Hill Tramway Act, 1893."

Interpretation of terms.

2. In the construction of this Act, unless the context requires a different meaning, the expression—

"Commissioners" means the Railway Commissioners for the time being.

"Crown Lands" means Crown lands as defined by the "Crown Lands Act of 1884."

"Gazette" means the *Government Gazette*.

"Governor" means the Governor, with the advice of the Executive Council.

"Justice" means any Justice or Justices of the Peace.

"Minister" means the Minister charged with the administration of this Act.

"Owner" includes lessee or occupier, and lessee or licensee under the Crown.

"Person" means any individual, as well as any company, corporation, municipality, borough, or other local authority.

"Prescribed" means prescribed by this Act, or by the regulations made under this Act.

"Private land" means any land which is not Crown or public land, or which is hereinafter expressly referred to as private land.

"Public land" means Crown land not held under lease or license under the Crown Lands Acts or under any other Act authorising the occupation or use of Crown lands, or any lands reserved or dedicated for public uses or purposes (exclusive of roads), whether held by trustees or not, if such lands are not, for the time being, lawfully held under any lease or license.

"Regulations" means the regulations made under this Act.

"Road" means a public road so constituted by reservation, proclamation, dedication, or otherwise howsoever.

"The Promoter" means the said John Mitchell Purves, his heirs, executors, administrators, and assigns.

"The Tramway" means the Tramway authorised by this Act, together with all necessary and relative works.

The intervention of a road or water-course (not being a permanent river) shall not prevent holdings or lands being held to be "adjoining."

Authority to construct tramway.

3. It shall be lawful for the Promoter, his heirs, executors, administrators, and assigns, upon the terms and conditions and subject to the provisions hereinafter contained, and subject to the deposit hereinafter provided for, to make and construct a Tramway for the carrying of ores, minerals, metals, coal, coke, timber, and other

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other goods and materials, live stock, and passengers along the line of Tramway by the route, and along and over the roads, streets, lands, and reserves, described in the First Schedule hereto, and to take and use so much of the said roads, streets, lands, and reserves, whether the same shall be Crown, public, or private lands, as may be required for the purposes of such Tramway, but so that the same shall not occupy on Crown or public lands a greater space in breadth than sixty-six feet, including the support and foundations thereof, but exclusive of land required for sidings, stations, workshops, offices, embankments, approaches, and conveniences for or in connection with the Tramway: Provided that it shall be lawful for the Promoter to deviate from the line of Tramway described in the Schedule to this Act, on either side thereof, at any part thereof, to such distance as may be approved by the Minister: Provided further that the Promoter shall, within four months from the passing of this Act, lodge with the Colonial Treasurer the sum of three thousand pounds, and within fourteen months from the passing of this Act expend ten thousand pounds in the actual work of construction, commencing at Menindie, to the satisfaction of the Minister. In the event of the latter sum being expended as provided, then the sum of three thousand pounds shall be returned; but in case the sum of ten thousand pounds shall not be so expended, then the said deposit of three thousand pounds shall be forfeited and become part of the Consolidated Revenue, and all the rights granted under this Act shall cease.

4. This Act shall, immediately on the passing thereof, operate and take effect as a license to the Promoter to form, maintain, and work the Tramway, subject to the provisions hereof. Effect of Act on passing thereof.

5. Where the said Tramway traverses public thoroughfares it shall be laid at about the general level of such thoroughfares, and so that the rails shall not project above the surface thereof; and the Promoter shall maintain in perfect order and repair the Tramway, and the pavements of the same between the rails of the Tramway, and for the space of one foot six inches on each side of the said rails, and furthermore shall erect and maintain all necessary causeways in connection with the said tram. Levels of line.

6. The gauge of the Tramway shall be four feet eight and one-half inches. And no passenger carriage or truck shall be allowed to run over such Tramway unless of the same gauge as the passenger carriages and trucks used by the Railway Commissioners on the main lines of the Colony. Gauge.

7. The Promoter and all other persons duly authorised shall have all necessary rights, subject to the provisions of the "Municipalities Act," over the roads, streets, and lands described in the First Schedule to this Act as are required for the construction, repair, completion, and use of the Tramway: Provided that there shall be no interference with ordinary traffic beyond what is necessary for such purpose. Authorised persons to have rights over streets, &c.

8. It shall be lawful for the Promoter to employ upon the Tramway horses, steam, or other motive power, and carriages, waggons, or trucks to be drawn thereby, and to carry passengers, ores, minerals, metals, coal, coke, timber, and other goods and materials, and live stock upon the Tramway. To employ horse, steam, or other motive power.

9. Before commencing the first or any section of the Tramway the Promoter shall by some qualified Engineer by him to be appointed cause to be made and taken levels and surveys of the lands through which any such section of the Tramway is to be carried, together with a Map or Plan of the line of such section, and of the lands through which it is to pass, and a Book of Reference in which shall be set forth a description of the said several lands, and the names of the owners. Before commencing to construct tramway survey to be made and Book of Reference.

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owners thereof so far as the same shall be known or can with reasonable diligence be ascertained, setting forth the bearings of the Tramway as the case may require, and the nature and quality, state of cultivation and enclosures (if any), and the quantity of such land which may be required for the purpose of making such section. And the said Map or Plan and Book of Reference shall be deposited with the Minister, and true copies thereof signed by the Promoter, shall be deposited with the Clerks of Petty Sessions (or their representatives) at Menindie and Willyama (Broken Hill) aforesaid, and such copies shall be open at all convenient times for public examination from the day of the date on which such notice as in the next succeeding section is provided shall be first published.

Notice of intention to make tramway.

10. The Promoter shall by advertisement in the *Gazette*, and in one or more newspapers published or circulating in Sydney, Menindie, and Willyama (Broken Hill), respectively, give notice at least thirty days before the commencement of the formation of any section of the Tramway that he intends to construct such section of the Tramway, between the places therein specified, according to the copies of the said Map or Plan deposited as aforesaid.

Error or omission in Books of Reference or Plans not to impede making of Tramway or works.

11. No advantage shall be taken of or against the Promoter, nor shall any interruption be given to the making of the Tramway or other works, on account of any error, omission, misstatement, or erroneous description or delineation in the Books of Reference, or Maps, or Plans, or copies thereof; but it shall be lawful for the Promoter, his agents, officers, surveyors, servants, and workmen to enter into and upon, and to take and use for the purpose of this Act, any lands or grounds, set out and described or delineated, or intended to be described or delineated, in any of the said Books of References, or Maps or Plans, or copies thereof, notwithstanding any such error, omission, misstatement, or erroneous description or delineation, if it shall appear to any two Justices, acting for the district or place in which such lands or grounds shall be situated, and be certified under their hands that such error, omission, misstatement, or erroneous description or delineation proceeded from mistake and not from fraud.

Minister to approve of, and may require alterations on Plans, &c.

12. The Minister may require such alterations as he may think necessary to be made in the Maps or Plans deposited with him as aforesaid, in order to bring the same into accordance with the provisions of this Act: Provided always, that the detailed plans, sections, and specifications of the Tramway shall, from time to time, be lodged with the Minister for approval as the construction of the Tramway proceeds; and the Promoter shall construct the said Tramway in accordance with the plans, sections, and specifications so deposited with the Minister, and thereafter approved by him, with such alterations therein as he may have approved or required to be made.

Tramway may be inspected during construction.

13. The Minister may from time to time appoint one or more officers to inspect the Tramway during the construction thereof, and it shall be lawful for every officer so appointed for the purpose aforesaid from time to time to enter upon the Tramway during the construction thereof, and to inspect the manner in which the same is being constructed, and the condition and state of repair thereof; and the Minister, upon the report of any such officer as aforesaid, may require the Promoter to make such additions or repairs to the Tramway as may be necessary to make the Tramway comply with the plans, sections, and specifications thereof approved of by the Minister, or to ensure the safety of the Tramway; and the Promoter shall, within such time as the Minister shall require, make all such additions or repairs to the Tramway as the Minister shall so require as aforesaid.

Tramway not to be used until Engineer certifies.

14. No part of the Tramway shall be opened for public traffic until the Engineer-in-Chief or such officer as the Minister may appoint has certified

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certified that such part of the Tramway has been efficiently constructed, and all the rolling stock to be used thereon is in good and efficient condition and repair, and may be safely used for public traffic thereon.

15. After the Tramway is completed the Promoter shall properly and efficiently maintain and work the Tramway, and the Minister may from time to time appoint one or more officers to inspect the Tramway and to report upon the state and condition of repair thereof and in the manner in which the same is being maintained and worked; and it shall be lawful for every officer so appointed for the purpose aforesaid from time to time to enter upon the Tramway and to inspect the same and all the rolling stock thereof, and the manner in which the Tramway is being worked; and the Minister may, upon the report of any such officer as aforesaid, require the Promoter to make such repairs to the Tramway and such repairs or additions to the rolling-stock thereof as may be necessary to ensure the safety of the Tramway or of the passengers travelling thereon, or the efficient maintenance and working of the Tramway in accordance with the provisions of this Act; and the Promoter shall, within such time as the Minister shall require, make all such repairs and additions to the Tramway and the rolling-stock thereof as the Minister shall so require as aforesaid.

Tramway to be kept in proper repair.

16. The Tramway shall be open to the public use upon payment of such rates, tolls, or charges as may be approved by the Commissioners, and such rates, tolls, or charges may be made, demanded, sued for, and recovered by the Promoter: Provided that, unless with the consent of the Promoter, such tolls or charges shall, respectively, be not less in amount than fifty per centum over and above the respective amounts of any similar tolls or charges in force on the Government Railways: Provided that no differential charges shall be made, but that the charges, per class, of passengers and goods shall be equal to all persons using the Tramway: Provided also that Members of the Parliament of New South Wales shall be entitled to travel, free of charge on the Tramway.

Rates and tolls chargeable.

17. A list of all the tolls which the Commissioners may have approved of as aforesaid, for the time being, shall be published by the same being painted upon one toll-board, or more, in distinct black letters upon a white ground, or white letters on a black ground, or by the same being printed or written in legible characters on paper affixed to such board, and by such board being exhibited in some conspicuous place on the stations or places where such tolls shall be made payable: And no toll shall be demanded or taken by the Promoter for the use of the Tramway during any time at which the boards hereinbefore directed to be exhibited shall not be so exhibited.

List of tolls to be exhibited.

18. The tolls aforesaid shall be paid to such persons, and at such places upon or near to the Tramway, and in such manner as the Promoter shall appoint.

Tolls to be paid to persons, and at places appointed by Promoter.

19. In case default is made in payment of any money due and payable in respect of the carriage or conveyance of any passenger or any goods, or in respect of the demurrage or storage of any goods, under the authority of this Act, the same may be recovered by the Promoter in a summary way before any Justice of the Peace; and it shall be lawful for the Promoter to detain the goods in respect of which such money is payable until the same and the expenses incurred by the Promoter in connection with such goods shall have been fully paid and satisfied; and also if such goods have been detained during a period of not less than three months, to sell the same or so much thereof as may be necessary by public auction, to be duly advertised, and to apply the proceeds in or towards satisfying the money and expenses so due and payable.

Rates and tolls may be recovered.

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Lease of Crown  
lands.

20. The Promoter shall be entitled to a lease for twenty-one years from the Crown, dating from the opening of the Tramway for traffic of such Crown lands as shall be necessarily used or required for the Tramway, including such Crown lands as shall be necessarily used or required for sidings, stations, station buildings, workshops, offices, embankments, approaches and other works and conveniences in connection with the Tramway, and shall pay to the Crown such annual rent as the Minister for Lands may direct: Provided that after the expiry of the said twenty-one years the Promoter shall be entitled to a renewal of the said lease from year to year unless and until the Tramway shall be resumed by the Governor under the provisions of this Act.

Construction of  
works.

21. Subject to the provisions of this Act, it shall be lawful for the Promoter, for the purpose of constructing the Tramway, to execute any of the following works, that is to say,—

To enter upon any lands to survey and take the levels of the same.

To make or construct upon, across, under, or over any lands, streets, roads, rivers, creeks, or other waters such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, culverts, drains, arches, cuttings, fences, and other works as the Promoter may think proper.

To divert or alter, as well temporarily as permanently, the course of any streams of water, roads, streets, or ways, or raise or sink the level of any such roads, streets, or ways, in order the more conveniently to carry the same over or under or by the side of the Tramway, as the Promoter may think proper.

To make drains or conduits into, through, or under any lands adjoining the Tramway, for the purpose of conveying water from or to the Tramway.

To draw water from any stream or river in the vicinity of the Tramway for the supply of locomotives and other purposes, at such elevation as may be necessary to secure a fall into any Tramway tank by natural gravitation.

To erect and construct such houses, warehouses, goods-sheds, offices, and other buildings, yards, stations, wharfs, engines, machinery, and apparatus, and other works and conveniences as the Promoter may think proper.

From time to time to alter, repair, or discontinue the before-mentioned works, or any of them, and substitute others in their stead.

To do all other acts necessary for making, maintaining, altering, or repairing and working the tramway.

Provided that in the exercise of the above-mentioned powers the Promoter shall do as little damage as can be, and shall make full compensation in manner hereinafter, and in any Act incorporated herewith, provided, to all parties interested for all damage by them sustained by reason of the exercise of such powers. And provided also that where lands entered upon by the Promoter are Crown lands, nothing in this Act contained shall be held to exempt the Promoter from the provisions of Part VI of the "Crown Lands Act of 1884."

Power to enter upon  
adjoining lands to  
repair accidents, sub-  
ject to certain  
restrictions.

22. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the Tramway, it shall be lawful for the Promoter and his workmen or servants, to enter upon the lands adjoining thereto, at any time whatsoever, for the purpose of repairing or preventing such accidents, and to do such works as may be necessary for the purpose, but in every such case the Promoter shall, within fourteen days after such entry, make a report to the Minister, specifying the nature of such accident or apprehended accident, and of the works necessary to be done, and such powers shall  
cease

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cease and determine if the said secretary shall, after considering the said report, certify that their exercise is not necessary for the public safety: Provided also that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible despatch, and full compensation shall be made to the owners and occupiers of such lands for the loss, or injury, or inconvenience sustained by them respectively, by reason of such works, the amount of which compensation, in case of any dispute about the same, shall be settled by arbitrators in the manner hereinafter mentioned: And provided also that no land shall be taken permanently for any such works otherwise than is herein provided with respect to the lands originally taken for the purpose of making the said Tramway.

23. The Promoter shall not be entitled to any mines of coal, iron, slate, or other minerals under any land whereof the surface is vested in him or them by virtue of this Act, except only such parts thereof as shall be necessary to be dug or carried away in the construction of the works hereby authorised, and such mines shall not be deemed to vest in the Promoter. The Promoter not entitled to minerals.

24. This Act shall become null and void if—

- (a) The construction of the Tramway is not commenced in a *bona fide* manner within six months from the date of this Act.
- (b) The Tramway is not completed, fully equipped, and ready for traffic to the satisfaction of the Commissioners within two years from the date of this Act.
- (c) The Tramway is not at any time after the completion thereof, without reasonable cause, properly and efficiently maintained and worked in accordance with the provisions of this Act: Provided that no strike shall be taken as a reasonable cause where the Promoter has refused to submit the dispute to arbitration or conciliation under the Act of 1892, or any Act amending the same.
- (d) The Promoter shall not provide and maintain engines and rolling stock reasonably sufficient for the conveyance of passengers and the average amount of tonnage which may be offered for carriage on the Tramway.

Act to become null and void in certain events.

Provided that the Minister shall have power to extend the said periods in each case referred to in this section for such further periods as the Promoters shall have been unable to deliver the plant and material for the permanent way or equipment of the Tramway at Menindie, owing to the rivers Darling or Murray being temporarily unnavigable.

25. At any time after the expiry of twenty years from the date of the opening of the Tramway for traffic, the Governor may, if he think fit, purchase the Tramway, and the rolling stock, equipment, goods, chattels, and all rights in relation to the same or any of them, and all the estate or interest of the Promoter in the lease aforesaid, and any other land used or intended for use in connection with the Tramway, upon giving to the Promoter six months' notice, in writing, of his intention to do so. If the amount tendered for the purchase of the said property be considered inadequate by the Promoter, the amount shall be ascertained in the same manner as is provided for questions of disputed compensation under and in terms of the "Lands for Public Purposes Acquisition Act," and any Act amending or repealing the same.

Power of purchase of Tramway by Government.

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## PART II.

*The occupation and acquisition by the Promoter of lands—ascertainment and payment of compensation in respect thereof—penalties imposed.*

Conditions prior to acquisition of private lands.

26. Before the Promoter shall put into force any of the provisions contained in this Act with respect to the acquisition or occupation of private lands otherwise than by agreement, if any shall be so required to be resumed and taken under the provisions of this Act, the following conditions and provisions shall be observed :—

- (I) The Promoter shall publish once at the least in each of three consecutive weeks in some local newspaper circulating in the Police District of Mitchell, a notice describing shortly the nature of the undertaking in respect of which it is proposed to take any private lands, naming their registered office as the place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands required.
- (II) The Promoter shall serve a notice on every owner or reputed owner, lessee, or reputed lessee and occupier of such private lands, describing in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neutral in respect of taking such lands.
- (III) On compliance with the provisions of this section with respect to notices, the Promoter may, if he think fit, present a petition to the Governor, and such petition shall state the private lands intended to be taken, and the purposes for which they are required, and the names of the owners, lessees, and occupiers of lands who have assented, dissented, or are neutral in respect to the taking of such lands, or who have returned no answer to the notice. And it shall pray that the Promoter may, with reference to such lands, be allowed to put in force the powers contained in this Act, with respect to the acquisition or occupation of private lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Governor may require.
- (IV) On the receipt of such petition, and on due proof of the proper notices having been published and served, the Governor shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition, but until such inquiry has been made, no provisional order shall be made affecting any such lands without the consent of the owners, lessees, and occupiers thereof.
- (V) After the completion of such inquiry the Governor may, by provisional order, empower the Promoter to put in force with reference to the private lands referred to in such order the powers of this Act with respect to the acquisition and occupation of private lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Governor may think fit, and it shall be the duty of the Promoter to serve a copy of any order so made, in the manner and on the person in which and on whom notices in respect of such lands are required to be served.



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27. After the approval by the Governor of the acquisition of private land otherwise than by agreement, if any shall be resumed and taken under the provisions of this Act, and after publication of the notification in the last section mentioned, but not before, it shall be lawful for the Promoter to acquire the lands described in the First Schedule hereto, in manner and under and subject to the conditions in this Act specified and contained.

Promoter may acquire lands after approval by the Governor.

28. It shall be lawful for the Promoter, by notification to be published in the *Gazette*, and in one or more newspapers published or circulating in the Police District of Mitchell, to declare that the lands described in such notifications are required under this Act for the purpose therein expressed, but the purpose so to be expressed shall be limited to the acquisition of lands for Tramway purposes under this Act.

How and when lands can be taken.

29. Upon the publication of the notification in the *Gazette* declaring that the private lands therein described are so required, such lands shall, upon compliance with the requirements and provisions in this Act contained, be vested in the Promoter for the purposes of this Act, for an estate of inheritance in fee-simple in possession, freed and discharged from all trusts, obligations, estates, interests, contracts, charges, rates, right-of-way, or other easements whatsoever, and to the intent that the legal estate therein, together with all powers incident thereto or conferred by this Act, shall, subject to the provisions thereof, be vested in the Promoter.

Vesting, &c., of lands.

30. Where the land required under this part of this Act is Crown Land at the date of such publication, or is vested in any corporation or person on behalf of Her Majesty, or for public purposes, by virtue of any statute, or is within the limits, with reference to centres of population, prescribed by the Act next hereinafter cited, the effect of such publication shall be to withdraw the said land (to the extent required) from any lease or license or promise thereof, and to cancel to the like extent any dedication or reservation of the said land made under the authority of the "Crown Lands Alienation Act of 1861," or any Act or Acts amending or repealing the same, and to divest the estate of such corporation or person, and to vest the said land, to the extent aforesaid, in the Promoter, for the purposes mentioned, and for the estate mentioned in the last preceding section: Provided, however, that nothing in this section contained shall have any effect or operation unless the approval of the Governor shall first have been obtained with respect to the land so required.

Effect of publication upon Crown Lands.

31. Where the land described in any such notification under this part of this Act consists wholly or partly of land alienated by, or not the property of, the Crown, or is not Crown Land as defined by this Act, or is held under any lease or license from the Crown, the owners, lessees, or licensees thereof shall be entitled to receive such sum of money, by way of compensation, for the land so described, as shall be agreed upon, or otherwise ascertained, under the provisions hereinafter contained.

Compensation for private lands.

32. The estate and interest of every person entitled to lands required under this part of this Act, or any portion thereof, and whether to the legal or equitable estate therein, shall, upon due payment of the amount of compensation tendered by the Promoter, or assessed by the jury as hereinafter provided, be deemed to have been as fully and effectually conveyed to the Promoter as if the same had been conveyed by the persons legally or equitably entitled thereto by means of the most perfect assurances in the law. And every person shall, upon asserting his claim as hereinafter provided, and making out his title in respect of any portion of the said resumed lands, be entitled to compensation on account of such resumption in manner hereinafter provided.

Conversion of estate of proprietor of resumed land into a claim.

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Notice of claim for compensation.

33. Every person claiming compensation in respect of any land so required, or in respect of any work or other matter done under the authority of this Act, shall, within ninety days from the publication of such notification, or at any time afterwards within such extended time as a judge of the Supreme Court shall, upon the application and at the cost of the claimant, appoint in that behalf, serve a notice in writing upon the Promoter, which notice shall set forth the nature of the estate or interest of the claimant in such land, together with an abstract of his title, and if he claims in respect of damage, the nature of the damage which he has sustained or will sustain by reason of the taking of his land, or of such work or matter as aforesaid, and such notice may be in the form of the Third Schedule hereto, but with any modifications required by the nature of the claim.

Claim and report thereon.

34. Within sixty days after the receipt of every such notice of claim, the Promoter shall cause a valuation of the land or of the estate or interest of the claimant therein to be made in accordance with the provisions of this Act, and shall inform the claimant as soon as practicable of the amount of such valuation by notice in the form of the Third Schedule hereto.

Compensation by action in Supreme Court.

35. If within ninety days after the service of notice of claim the claimant and the Promoter shall not agree as to the amount of compensation, the claimant shall be at liberty to institute proceedings in the Supreme Court in the form of an action for compensation against the Promoter; and any such action may be tried before a Judge of the said Court, or in any Circuit Court, and a special jury of four persons: Provided always that upon proper application, either of the Promoter or of the claimant, a special jury of twelve may be summoned for the trial of such action: Provided also that with the consent in writing of the Promoter and the claimant, any such action may be so tried at any time (to be mentioned in such consent) before the expiration of ninety days from service of the notice of claim for compensation, but not within fourteen days from service of the notice of valuation on such claimant.

Issue in action of compensation, verdict, and costs.

36. The issue to be tried in any such action shall be whether the claimant is entitled to a larger sum by way of compensation than the amount of the valuation so made by the Promoter and notified to the claimant as aforesaid; and if so, to what sum. And if upon the trial of the said action the verdict shall be for a greater sum than the amount of the said valuation, the costs of the action shall be borne by the Promoter, but if the verdict shall be for a sum equal to or less than such valuation, then the costs shall be borne by the claimant.

As to payment of compensation.

37. All moneys payable under this Act by way of compensation to any claimant, whether under the verdict of a jury or otherwise, shall be paid together with costs (if any) and interest at the rate of six pounds per centum per annum, reckoned from the date of the notification aforesaid within one month after the determination of such compensation to the person lawfully entitled thereto, or to his agent duly authorised in that behalf in writing, but the claimant shall be bound to make out his title to the estate or interest claimed by him in all cases where the claim is in respect of the deprivation of some estate or interest in land: Provided that in the case of land under the surface taken for the purpose of constructing a subterranean tunnel for water supply, no compensation shall be allowed or awarded unless the surface of the overlying soil be disturbed, or the support to such surface be destroyed or injuriously affected by the construction of such tunnel, or unless any mines or underground workings in or adjacent to such land be thereby rendered unworkable or be so affected as aforesaid.

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38. In estimating or assessing the compensation to be paid under this Act, regard shall be had by the valuers and by the jury (on any issue), not only to the value of the land taken by the Promoter, but also to the damage (if any) to be sustained by the claimant by reason of the severing of the lands taken from other lands, or other injuries suffered by him by reason of the exercise of the powers expressed or incorporated in this Act, and they shall assess the same according to what they shall find to have been the value of such lands, estate, or interest at the time notice was given of such lands being required or having been taken: Provided always that the said valuers and jury, in ascertaining in assessing such compensation, shall take into consideration and give effect to, by way of set-off or abatement, any enhancement in the value of any land so required or taken, or in the value of any land belonging to such owner adjoining the land so required or taken or severed therefrom, and caused by or due to the Tramway and works made and constructed under this Act by the Promoter. But in no case shall this proviso operate so as to require any payment to be made by such owner to the Promoter in consideration of such enhancement of value as aforesaid.

Regard to be had to damage by severance and to enhancement in value caused by Tramway and works

39. Subject to the provisions of this Act it shall be lawful for the Promoter, and for any officer there duly authorised in that behalf, and for all persons employed in the carrying out of any authorised works, and for any person authorised by the Promoter to enter upon the lands of any person whomsoever, which the Promoter may require to purchase or take, and to take possession and appropriate the same for the purposes of this Act, or of the execution of any such authorised works.

General power of entry.

40. Notwithstanding anything hereinbefore contained, it shall be lawful for the Promoter, if he think fit, to agree with the owners of any lands, the acquisition of which is authorised by this Act, and with all parties having any estate or interest in such lands, or by this Act enabled to sell and convey the same for the absolute purchase for a consideration in money of any such lands or such parts thereof as shall be thought proper, and of all estates and interests in such lands of what kind soever.

Power to purchase lands by agreement.

41. Notwithstanding anything hereinbefore contained, it shall be lawful for the Promoter, if he think fit, to agree with any person claiming compensation in respect of any land required, or in respect of any works or other matter done under the authority of this Act, to refer such claim to the decision of two arbitrators and their umpire.

Power to refer to arbitration.

42. It shall be lawful for all parties being seized, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the Promoter, and to enter into all necessary agreements for that purpose, and particularly it shall be lawful for all or any of the following parties so seized, possessed, or entitled as aforesaid so to sell, convey, or release, that is to say, all corporations, tenants-in-tail or for life, married women seized in their own right or entitled to dower, guardians, committees of lunatics, and idiots, trustees or feoffees in trust for charitable or other purposes, executors, and administrators, and all parties for the time-being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life or for lives and years or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties other than married women entitled to dower or lessees for life or for lives and years or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such

Parties under disability enabled to sell and convey and exercise other powers.

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such parties, and as to such married women, whether they be of full age or not as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots, respectively could have exercised the same power under the authority of this Act if they had respectively been under no disability; and as to such trustees, executors, or administrators on behalf of their *cestui que* trusts, whether infants, issue unborn, lunatics, *feme covert*, or other persons, and that to the same extent as such *cestui que* trusts respectively could have exercised the same powers under the authority of this Act if they had respectively been under no disability; and the power hereinafter given to release lands from any rent-charge or incumbrance, and to agree for the apportionment of any such rent-charge or incumbrance shall extend to, and may lawfully be exercised by, every party hereinbefore enabled to sell, and convey, or release lands to the Promoter.

Incorporation of provisions of Government Railways Act.

43. The several sections of the Government Railways Act, twenty-second Victoria number nineteen, hereinafter specified, together with the respective powers, authorities, duties, liabilities, obligations, and other the provisions therein contained, are hereby declared, notwithstanding the repeal of the said Act, to be incorporated with, and embodied in, this Act, to the intent that the same may be applied as fully and effectually to the lands taken under the authority of this Act as if the said sections had been specifically enacted herein. And that wheresoever in any section so incorporated the word "Commissioner" occurs, there shall, for the purposes of this Act, be substituted in lieu of such word the expression "the Promoter." And whenever the word "Tramway," or words implying works connected with a Tramway, occur, there shall be substituted such words respectively as denote the nature of the work, undertaking, or purpose in respect of which the land in question has been appropriated or resumed. The following are the sections so declared to be incorporated with this Act:—

- (I) As to the determination of compensation to absent parties, sections forty-two and forty-four, both inclusive.
- (II) As to the deposit of compensation money in certain cases with the Master in Equity and the application and investment thereof. As to payment of such money in certain cases to trustees or to the parties themselves, and the exoneration of the Promoter in respect thereof after payment. Sections forty-seven to fifty-two, both inclusive.
- (III) As to the deposit and application of compensation money on refusal of the owner to accept the same or on his failing to make out a satisfactory title, and as to presumption of ownership. Sections fifty-three to fifty-six, both inclusive.
- (IV) As to the procedure by the Promoter in case the owner or occupier of any lands resumed under this Act shall refuse to give up possession thereof or hinder the Promoter from entering upon or taking possession of the same. Section sixty-one.
- (V) As to the purchase or redemption of the interests of mortgagees, and the deposit of principal and interest due on mortgages with the Master in Equity, the procedure to be observed when the mortgaged lands are of less value than the mortgage debt, and where part only of lands in mortgage are taken. Sections sixty-five to seventy, both inclusive.
- (VI) As to the release of lands from rent-charges and other incumbrances, and procedure thereon. Sections seventy-one to seventy-four, both inclusive.

(VII)

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- (VII) As to the apportionment of rent where lands taken are under lease, and as to compensation to tenants. Sections seventy-five to seventy-eight, both inclusive.
- (VIII) As to the crossing of roads and other highways, the making of bridges and other works of accommodation, and the provisions consequent thereon. Sections eighty-four to ninety-seven, both inclusive: Provided that compensation shall in all respects be ascertained in accordance with this Act.
- (IX) As to liability as a carrier. Section one hundred and one.
- (X) As to account of lading, &c., to be given, penalty for not giving same, disputes as to amount of tolls chargeable, differences as to weights, &c., wrongful detention of goods, penalty on passengers practising frauds, detention of offenders, and carriage of dangerous goods. Sections one hundred and six to one hundred and thirteen, both inclusive.
- (XI) As to regulations concerning the use of the Tramway, the making of regulations by by-laws, publication of by-laws, and by-laws being binding on all parties. Sections one hundred and fifteen to one hundred and eighteen inclusive.
- (XII) As to obligations of officers or servants employed. Sections one hundred and nineteen to one hundred and twenty-two inclusive.
- (XIII) As to various offences and penalties therefor, publication of penalties. Sections one hundred and twenty-seven to one hundred and thirty-two, both inclusive. Sections one hundred and thirty-four and one hundred and thirty-five.

44. If any person omit to shut and fasten any gate set up for the accommodation of the owners of the adjoining lands, as soon as he and the carriages, cattle, or other animals under his care have passed through the same, he shall forfeit for every such offence any sum not exceeding ten pounds.

Penalty on persons omitting to fasten gates.

## PART III.

*Miscellaneous Provisions—Legal procedure.*

45. One-half of any penalty recovered under this Act shall be paid to the informer; and where any distress is made for any sum of money to be levied under this Act, the distress itself shall not be unlawful, nor the persons making the same be deemed trespassers, on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceedings relating thereto, nor shall the persons distraining be deemed trespassers on account of any irregularity that shall be afterwards done by the persons distraining, but the persons aggrieved by such irregularities may recover satisfaction for the special damage in an action on the case.

Moiety of penalties to be paid to informers—Distress not unlawful for want of form.

46. If it shall be proved to the satisfaction of any two Justices in Petty Sessions assembled, that the Promoter or any of his officers have been guilty of any default under this Act not otherwise provided for, they shall be liable for each and every such default to a penalty not exceeding five pounds, to be recovered in a summary way.

Penalty for default not otherwise provided for.

47. Where by this Act any question of compensation, expenses, charges, or damages, or other matter is required to be referred to the determination of any Justices, it shall be lawful for any Justice, upon the application of either party, to summon the other party to appear before two Justices at a time and place to be named in such summons, and

Method of proceeding before Justices in question of damages, &c.

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and upon the appearance of such parties, or in the absence of any of them upon proof of due service of the summons, it shall be lawful for such two Justices to hear and determine such question, and for that purpose to examine such parties or any of them and their witnesses on oath, and the cost of every such inquiry shall be in the discretion of such Justices, and they shall determine the amount thereof.

Penalties, &c., to be summarily recovered before two Justices.

48. Every penalty, forfeiture, charge, or sum of money imposed by or made payable under this Act, the recovery of which is not otherwise provided for, may be recovered by summary proceedings before two Justices, under the provisions of the Act or Acts in force for the time being regulating summary proceedings before Justices. And where any such penalty, charge, or sum be not paid, either immediately after conviction or adjudication, or within the time appointed thereby, the same may be enforced by distress and sale of the offender's or defaulter's goods and chattels, in the manner provided by the said Acts.

Parties allowed to appeal to Quarter Sessions on giving security.

49. If any party shall feel aggrieved by any determination or adjudication of any Justices with respect to any penalty or forfeiture under the provisions of this Act, such party may appeal to the nearest Quarter Sessions; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought; nor unless the appellant forthwith after such notice enter into recognizances with two sufficient sureties before a Justice, conditioned duly to prosecute such appeal, and to abide the order of the Court thereon. At the Quarter Sessions, for which such notice shall be given, the Court shall proceed to determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following Sessions, and upon the hearing of such appeal, the Court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and also may order such further satisfaction to be made to the party injured, as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Court to make such order as they think reasonable.

Damage to be made good in addition to penalty.

50. If through any act, neglect, or default, on account whereof any person shall have incurred any penalty imposed by this Act, any damage to any conduit, main, pipe, sewer, or other property of the Promoter, used in connection therewith, shall have been committed by such person, he shall be liable to make good such damages as well as to pay such penalty, and the amount of such damages shall, in case of dispute, be determined by the Justices by whom the party incurring such penalty shall have been convicted, and on non-payment of such damages on demand the same shall be levied by distress, and such Justices, or one of them, shall issue their warrant accordingly.

Notice.

51. Any notice required by this Act, or by any by-law or regulation made thereunder to be served on, or given to, any owner or occupier of any building, land, or premises, or on or to any person, may be in writing, or partly in writing and partly printed, or may be wholly printed. And it shall be sufficient for all purposes of this Act, unless the said Act in any case prescribes a different course to be pursued, if any such notice is sent by post to the owner by registered letter addressed to his last-known place of abode or of business, or is served on the owner or occupier of such building, land, or premises, or left with some inmate apparently over the age of fourteen years living at the place of abode of such owner or occupier, or if there be no occupier, if such notice be posted on some conspicuous part of such building or land. And any notice required to be served or given in respect

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respect of any public street, road, or lane may be served on or sent by post as aforesaid to the Council Clerk of the Borough or Municipal District wherein such street, road, or lane, or a portion thereof affected by the notice is situated.

52. In the event of the wrongful exercise of any powers given by this Act, nothing in this Act contained shall be construed to prevent any person from indicting, or otherwise proceeding, either civilly or criminally against the Promoter or his officers, for nuisance or otherwise in respect of the works, or means used or employed by the Promoter in the exercise of the privileges hereby conferred on the Promoter, or to prevent the Promoter, or any person recovering any sum of money, or otherwise proceeding in any Court of competent jurisdiction; but the Promoter or any person, to whom any penalty or sum of money may, by the provisions of this Act, be awarded, may elect either to proceed in manner in this Act provided, or to proceed for and recover damages or otherwise, in any Court of competent jurisdiction.

Indictment for nuisances.

53. No proceeding in pursuance of this Act or any portion of any Act incorporated therewith shall be quashed or vacated for want of form, nor shall the same be removed from any inferior Court, by *certiorari* or otherwise, into the Supreme Court.

Proceedings not to be quashed for want of form.

54. For any of the purposes of the Promoter authorised by this Act, subject to the provisions of this Act, the Promoter may from time to time borrow money in such sum or sums as the Promoter may think fit; and for securing the repayment of the money so borrowed, with interest, it shall be lawful for the Promoter to issue debentures, to be charged and secured upon the Promoter's lands, works, materials, rights, privileges, and revenues, or to mortgage the same.

Borrowing powers.

55. It shall be lawful for the Promoter, at any time after the passing of this Act, to assign, transfer, convey, and release to any company duly incorporated, and having a registered office in the Colony aforesaid, all or any of the rights, powers, authorities, privileges, liabilities, and obligations conferred and imposed by this Act, together with all or any of the lands, tenements, hereditaments, estates, chattels, and effects of every kind acquired under or in pursuance thereof, and purchased, occupied, or used in connection with the same, and upon and after the completion of such assignment, transfer, conveyance, and release the said company, their officers, agents, and servants alone may lawfully exercise and enjoy all the rights, powers, authorities, and privileges, and shall be and continue alone to be subject to all the liabilities, obligations, penalties, and forfeitures to which the said Promoter, his officers, agents, or servants would have been entitled or subject had no such assignment, transfer, conveyance, and release been completed: Provided, however, that nothing herein contained shall prejudice or effect any rights accrued, action or proceedings taken against, or liabilities, obligations, penalties, or forfeitures incurred by the Promoter before the completion of the said assignment, transfer, conveyance, and release, and for which the said assignees shall be as fully liable as the Promoter would have been if no such assignment, transfer, conveyance, and release had been executed.

Rights, powers, &c., under this Act may be assigned, &c.

56. Upon the completion of any such assignment, transfer, conveyance, or lease, as in the last preceding section mentioned, this Act shall be read so that wherever the words "John Mitchell Purves, his heirs, executors, administrators, or assigns" occur they shall be omitted, and the name of the company duly incorporated to which the said John Mitchell Purves may have assigned the rights, powers, authorities, privileges, liabilities, and obligations conferred and imposed by this Act, together with all or any of the lands, tenements, hereditaments, estates, chattels, and effects of every kind required under or in

How Act to be read upon completion of assignment under preceding section.

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pursuance thereof, and purchased, occupied, or used in connection with the same shall be inserted in their stead; and wherever the words "the Promoter" occur they shall be omitted and the words "the said Company" shall be inserted in their stead; and this Act shall, to any other or further necessary extent, be read and construed accordingly.

Power to extend provisions of the Act.

57. Upon the application of the Promoter the Governor may, by proclamation, declare that the provisions of this Act shall be extended to lands within the Counties of Menindie, Tandora, and Yancowinna, other than those within the area described in the First Schedule hereto, and thereupon such lands which shall in such proclamation be described, shall be included within the provisions of this Act, the same as if such lands had been included in the provisions of this Act originally.

SCHEDULES.

FIRST SCHEDULE.

ALL that piece of land commencing on the north side and eastern extremity of Albemarle-street, in the town of Menindie, county of Menindie, and Colony of New South Wales; thence north-westerly to a point in the county of Tandora, in the Colony aforesaid, at or near the point where the surveyed route of the proposed Government railway line, between the towns of Wilkannia and Willyama (Broken Hill), in the Colony aforesaid, crosses the Yancowinna Creek, about thirty-three miles north-east of the town of Willyama aforesaid; thence westerly upon or approximately parallel to the said surveyed route through the county of Yancowinna to the north end of Willyama aforesaid, at or near town allotment number ten of section number fifty.

SECOND SCHEDULE.

*Notice of Claim and Abstract.*

To the Promoter of the Menindie and Broken Hill Tramway Act.

IN pursuance of the "Menindie and Broken Hill Tramway Act," I (or we) hereby give you notice that I (or we) claim compensation for land hereunder described which has been resumed under the said Act. The amount of such claim and other the particulars required by the said Act are stated in the subjoined abstract.

*Abstract.*

Names and descriptions of parties claiming, and nature of their interests, whether tenants for life, in tail, or otherwise.	Situation and description of property.	Quit rents payable if leasehold, name of landlord, term of lease, and rent reserved.	Names of occupiers, distinguishing whether tenants at will or under lease, rent reserved, terms, &c.	Particulars of claim, specifying separately the amount claimed for value of property and for compensation.	Dates and other short particulars of documents of title.	Names of persons having the custody of documents and place or places where the same may be inspected, and name of claimant's solicitor or agent.

(Signature)  
(Address)  
(Date)

THIRD SCHEDULE.

*Notice of Valuation.*

To A.B., claimant in respect of the land hereunder described, resumed under the "Menindie and Broken Hill Tramway Act."

TAKE notice that the land hereunder described, being that in respect of the resumption whereof under the authority of the aforesaid Act your claim of compensation has been lodged, has been valued at the sum of £

*Description of land in respect of which claim has been made.*

ALL that piece or parcel of land, &c., &c., &c.