



ANNO DECIMO TERTIO

# GEORGI V REGIS.

A.D. 1922.

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No. 1536.

An Act to provide for the Construction of a Railway from Kowulka Siding to a point in Section 2 in the Hundred of Kevin, and for other purposes.

[Assented to, December 21st, 1922.]

**B**E it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Kowulka Railway Act, 1922." Short title.

2. The Acts mentioned in the Schedule, so far as the same are severally applicable to the purposes of this Act and not inconsistent with this Act, but with the exceptions stated in the Schedule, are incorporated with this Act. Incorporation with other Acts.

3. The South Australian Railways Commissioner (hereinafter referred to as "the Commissioner") may— Power to construct the railway.

1. construct a railway (hereinafter referred to as "the said railway") from Kowulka Siding, situated in the Hundred of Kevin on the railway authorised by the Wandana to Penong Railway Act, 1917, to a point in Section 2 in the said Hundred about four and a half miles from the said Kowulka Siding, as the said railway is delineated in the plan deposited in the office of the Surveyor-General, at Adelaide, signed "F. W. Stephen, Chief Engineer for Railways," and dated the fifth day of December, nineteen hundred and twenty-two, or as the said railway is delineated in any plans so deposited after the passing of this Act pursuant to any law for the time being in force as to the deposit of such plans ; No. 1292 of 1917.

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11. construct all proper works and conveniences connected with, or for the purposes of, the said railway, or any part or parts thereof, or of the said railway and any other railway or railways; and

111. maintain the said railway and all such works and conveniences:

Provided that in case the Houses of Parliament are not sitting when any plans and books of reference as to the said railway are deposited in the office of the Surveyor-General under section 9 of the Railways Clauses Act, 1876, the Commissioner may make deviations under the said section before causing copies of such plans and books of reference to be laid before Parliament; but such copies shall be laid before both Houses of Parliament within fourteen days after the next sittings of such Houses respectively.

No. 32 of 1876.

How work to be carried out.

4. The Commissioner, if he thinks proper, may for the purpose of constructing the said railway contract by petty contracts or on piece-work rates for the construction of any part or parts thereof.

Gauge and rails.

5. The gauge of the said railway shall be three feet six inches, and the rails to be used in the construction thereof shall be of steel, and of the weight of not less than forty pounds to the yard.

Fares, tolls, and charges.

6. The Commissioner may demand for the use of the said railway, and in respect thereof, and for the carriage of goods, stock, minerals, mails, parcels, and passengers thereon, and for the loading and unloading of goods, minerals, mails, and stock, such fares, tolls, charges, and rates as are from time to time fixed by the Commissioner, in manner prescribed by any Act or Acts under which the Commissioner may fix fares, tolls, charges, and rates in respect of the railways under his control.

Appropriation of fares, tolls, &c.

7. All fares, tolls, rents, dues, charges, rates, and sums of money which are received under the authority of this Act shall be paid, in such manner as is prescribed by the Governor, to the Treasurer of the said State for the public purposes of the said State.

Method of determining purchase-money and compensation for land taken.

8. When any land is purchased or taken by the Commissioner for the purposes of this Act, or the Commissioner exercises, with respect to any land and for such purposes, the powers conferred by any of the Acts incorporated with this Act, or any land is alleged to be injuriously affected by the constructing of the said railway or any works or conveniences authorised by this Act, if the amount of compensation to be paid to any owner of such land is not determined by agreement in writing, signed by or on behalf of such owner and the Commissioner, within twenty-one days after the Commissioner has given notice to such owner, as required by section 18 of the Lands Clauses Consolidation Act, that he requires to purchase or take such land, or that he desires to have the compensation for the exercise of the said powers or for the injurious

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injurious affection fixed, as the case may be, the amount of compensation shall be determined by arbitration in the following manner:—

1. The Commissioner may give notice in writing to such owner of his intention to have the compensation settled by arbitration, and may, by the same or a subsequent notice in writing to such owner, nominate and appoint an arbitrator to act in the reference on behalf of the Commissioner: Notice to arbitrate and appointment of arbitrator by Commissioner.
- II. Such owner may, within twenty-one days after the giving of such notice appointing an arbitrator, give notice in writing to the Commissioner agreeing that such arbitrator shall be sole arbitrator, or nominating and appointing another arbitrator to act in the reference on behalf of such owner: Appointment of arbitrator by owner.
- III. Each such notice nominating and appointing an arbitrator, or agreeing to the appointment of a sole arbitrator, shall be deemed a submission to arbitration on the part of the party by whom the same is given; and after the giving of any such notice neither party shall have power to revoke the appointment thereby made or such submission without the consent in writing of the other party, nor shall the death of either party operate as a revocation: Notice of appointment deemed a submission.
- IV. Unless such owner, within twenty-one days after the giving by the Commissioner as aforesaid of notice nominating and appointing an arbitrator, gives notice to the Commissioner, as provided by paragraph II. hereof, agreeing that such arbitrator shall be sole arbitrator or nominating and appointing another arbitrator, the Commissioner may appoint the arbitrator nominated and appointed by him to act on behalf of both parties; and such arbitrator shall proceed to hear and determine the matter and shall give his award determining the price and compensation (if any) to be paid: In default of appointment by owner, arbitrator appointed by Commissioner to act alone.
- V. All the provisions of sections 26 to 35 inclusive of the Lands Clauses Consolidation Act shall, *mutatis mutandis*, apply with respect to the arbitration and the determination of the compensation: Provisions as to umpire, vacancies, etc.
- VI. No notice, appointment, or award made under this section shall be set aside or be invalid for irregularity or error in matter of form: Informality not to invalidate.
- VII. Every award under this section of arbitrators, or of a single arbitrator (in a case where it is agreed, as mentioned in paragraph II. hereof, that an arbitrator shall be the sole arbitrator, or where a single arbitrator is empowered by this section to give an award), or of an umpire, shall be final: Provided always that where an arbitrator or umpire has misconducted himself the Supreme Court or a Judge thereof may remove him, and that where an arbitrator has misconducted himself, or an arbitration or award has been improperly procured, the said Court or a Judge thereof may set the award aside: Award to be final.

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Effect of submission  
and award.

VIII. A submission to arbitration under this section shall have the same effect as if it had been made an order of the Supreme Court; and an award under this section may, by leave of the Supreme Court or a Judge thereof, be enforced in the same manner as a judgment or order of the said Court to the same effect:

Meaning of "owner"  
and "land."

IX. In this section—

(a) the word "owner" includes, with respect to any land, any person having any estate or interest (legal or equitable) in the land, or any easement, right, power, or privilege in, under, over, affecting, or in connection with the land, or by the Lands Clauses Consolidation Act enabled to sell and convey, transfer, release, assign, or otherwise assure such estate, interest, easement, right, power, or privilege; and

(b) the word "land" includes any estate or interest (legal or equitable) in land, and any easement, right, or privilege in, under, over, affecting, or in connection with land.

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Railway not to be  
constructed until  
cost of working and  
interest on construc-  
tion guaranteed.

9. (1) The said railway shall not be constructed until—

(a) The company has entered into an agreement with the Commissioner guaranteeing to the Commissioner that at least twenty-five thousand tons of gypsum shall be carried over the said railway every year for the first twenty-five years following the commencement of the working of the said railway; and agreeing to pay to the Commissioner for the said twenty-five years interest at the rate of six per centum per annum on the cost of constructing the said railway and the proper works and conveniences referred to in section 3; and

(b) The Company has granted to the Commissioner an encumbrance or other security over its land, stock, and plant for the sum of at least Ten Thousand Pounds for the purpose of securing the due performance by the Company of the said agreement. Any such security shall remain in force until the expiration of a period of ten years following the commencement of the working of the said railway.

(2) In this section "the Company" means the Australian Gypsum Limited.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

TOM BRIDGES, Governor.

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## THE SCHEDULE.

Ordinance No. 6 of 1847.—The Lands Clauses Consolidation Act, except sections 9, 12 to 17 inclusive, 21 to 25 inclusive, 38 to 62 inclusive, 64 to 68 inclusive, 110, 114 to 120 inclusive, 136, and 137. Section 2.

Act No. 26 of 1855-6, being an Act to amend the Lands Clauses Consolidation Act, except sections 1, 4, and 6.

Act No. 202 of 1881.—The Lands Clauses Consolidation Amendment Act, 1881, except sections 5 to 11 inclusive.

Act No. 1035 of 1911.—The Lands Clauses Consolidation Further Amendment Act, 1911.

Act No. 1163 of 1914.—The Lands Clauses Consolidation Further Amendment Act, 1914.

Act No. 1326 of 1918.—Lands Clauses Consolidation Further Amendment Act, 1918.

Ordinance No. 7 of 1847.—The Railways Clauses Consolidation Act.

Act No. 6 of 1858, being an Act to amend the Railways Clauses Consolidation Act.

Act No. 32 of 1876.—The Railways Clauses Act, 1876.

Act No. 1392 of 1919.—Railways Clauses Act Amendment Act, 1919.

Act No. 414 of 1887.—The South Australian Railways Commissioners Act, 1887.

Act No. 512 of 1891.—The South Australian Railways Commissioners Act Amendment Act, 1891.

Act No. 612 of 1894.—The South Australian Railways Commissioners Act Amendment Act, 1894.

Act No. 912 of 1906.—The South Australian Railways Commissioners Further Amendment Act, 1906.

Act No. 988 of 1909.—The South Australian Railways Commissioners Act Amendment Act, 1909.

Act No. 1144 of 1913.—The South Australian Railways Commissioners Act Amendment Act, 1913.

Act No. 1332 of 1918.—South Australian Railways Commissioners Act Further Amendment Act, 1918.

Act No. 1486 of 1921.—South Australian Railways Commissioners Act Further Amendment Act, 1921.