

NORTH-SOUTH RAILWAY AGREEMENT ACT, 1926.

No. 1725 of 1926.

An Act to approve an agreement made between His Majesty's Government of the Commonwealth and His Majesty's Government of the State respecting the construction and maintenance of certain railways, to provide for the performance of the agreement by the State, to consent to the construction by the Commonwealth within the State of certain railways, and for other purposes.

[Assented to 25th February, 1926.]

BE 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 "North-South Railway Agreement Act, 1926." Short title.

2. (1) The agreement contained in the first schedule to this Act (hereinafter called the "agreement") is approved. Approval of agreement, and performance thereof by the State.

(2) The Government of the State may do or cause to be done all such acts, matters, and things as are necessary to carry the agreement into operation.

3. The State hereby consents to the construction and carrying out by the Commonwealth of the railways and railway works and operations which the Commonwealth undertakes by the agreement to construct and carry out: Provided that if the construction of the railway from Port Augusta to Red Hill referred to in the agreement is not commenced by the Commonwealth within such period (being not less than three years from the date of the commencement of this Act) as is notified to the Prime Minister of the Commonwealth by the Premier of the State within twelve months after the said commencement, the consent given by this section shall as regards such railway be null and void. Consent of the State to construction of railways.

Power of the
Common-
wealth with
respect to
railways.

4. For the purposes of constructing and carrying out the said railways and railway works and operations aforesaid and working and maintaining the said railways the Commonwealth and the Commonwealth Railways Commissioner shall have within the State all the rights, powers, and authorities which the State or the South Australian Railways Commissioner would have in respect of the purposes aforesaid under the Acts mentioned in the second schedule to this Act if those Acts applied in respect of such purposes.

Power of
South
Australian
Railways
Commissioner
with respect
to railways.

5. (1) The South Australian Railways Commissioner may construct and carry out all the railway works and operations required to be constructed or carried out by the State pursuant to the agreement.

(2) The Acts mentioned in the second schedule to this Act shall apply in respect of the construction and carrying out of the said railway works and operations.

SCHEDULES.

THE FIRST SCHEDULE.

AN AGREEMENT made this eighteenth day of September One thousand nine hundred and twenty-five BETWEEN THE COMMONWEALTH OF AUSTRALIA (hereinafter called the "Commonwealth") of the one part and THE STATE OF SOUTH AUSTRALIA (hereinafter called the "State") of the other part WHEREBY IT IS AGREED as follows:—

1. The Commonwealth will at its own expense forthwith upon the execution of this agreement proceed to make any necessary surveys and prepare estimates for the purposes of the railways referred to in clauses 4 and 5 hereof.

2. (a) The Commonwealth undertakes that as soon as the necessary surveys and estimates are complete it will introduce into and take all reasonable steps to have enacted by the Parliament of the Commonwealth legislation authorizing this agreement to be performed by the Commonwealth.

(b) The State undertakes that as soon as practicable it will introduce into and take all reasonable steps to have enacted by the Parliament of the State legislation authorizing this agreement to be performed by the State.

3. (a) Except as hereinbefore provided this agreement shall not have any force or effect or be binding on either party unless and until—

(i.) it is approved by the Parliament of the Commonwealth and the Parliament of the State; and

(ii.) the State has given all necessary consent to the Commonwealth for the construction extension and working in the State of the railways hereinafter referred to.

(b) When granting its approval and consent the State shall by legislation authorise the Commonwealth and the Commonwealth Railways Commissioner to exercise for the purpose of the construction and working of the said railways at least all the powers and privileges held or exercisable by the State and/or the State Railways Commissioner in or under the Statutes relating to Railways in force in the State to the same extent as if the said railways were to be constructed and worked by the State or the State Railways Commissioner.

4. (a) The Commonwealth will at its own expense construct as a portion of the Trans-continental Railway to be constructed pursuant to the agreement in the schedule to the *Northern Territory Acceptance Act* 1910 of the Commonwealth a railway whose northerly terminus shall be at Alice Springs in the Northern Territory.

(b) The said railway may be either—

(i.) a railway on a 3' 6" gauge extending to Alice Springs from Oodnadatta;
or

(ii.) a railway on a 4' 8½" gauge extending to Alice Springs from a point on the Kalgoorlie to Port Augusta Railway east of Tarecoola.

(c) Subject to subclause (b) of this clause the point of commencement the route and the gauge of the said railway and all other matters connected therewith shall be determined by the Commonwealth regard being had at all times to the development of the country the cost of construction of, and the estimated revenue from the railway;

(d) The Commonwealth will commence to construct the said railway within six months after the approval and consent mentioned in clause 3 hereof are obtained;

(e) Subject to the necessary approval and consent being obtained as aforesaid before the thirtieth day of June 1926 and subject also to any interruptions of work or other circumstances not within the control of the Commonwealth the Commonwealth undertakes that the said railway will be open for traffic on the thirtieth day of June 1929.

5. (a) The Commonwealth will at its own expense construct a railway on a 4' 8½" gauge from Port Augusta to Red Hill.

(b) The route of the said railway shall from a point near Port Pirie to Red Hill be as far as practicable the route recently recommended by the Railways Standing Committee of the State. The point at and the manner in which the said railway shall cross the State railway to Port Pirie shall be determined by agreement between the Railways Commissioners of the Commonwealth and of the State;

(c) Subject to subclause (b) of this clause the route and all other matters connected with the said railway shall be determined by the Commonwealth regard being had at all times to the development of the country the cost of construction and the estimated revenue from the railway.

(d) In approving and consenting to the said railway from Port Augusta to Red Hill the State may if it thinks fit provide that such approval and consent shall lapse and be of no effect if the construction of that railway is not commenced by the Commonwealth within a period to be specified by the Premier of the State not being less than three years from the date of such approval and consent.

6. (a) The State will at the expense of the Commonwealth during the construction of the said railway from Port Augusta to Red Hill lay a third rail on the 5' 3" railway of the State from Red Hill to the Central Railway Station in Adelaide so that under clauses 5 and 6 hereof there will at the time of completion of the said railway from Port Augusta to Red Hill be a continuous railway on a 4' 8½" gauge from Port Augusta to the Central Railway Station in Adelaide.

(b) The place at the Central Railway Station in Adelaide at which the terminus of the said third rail shall be situated and the manner in which the railway with the said third rail shall be connected at Adelaide with other railways of the State shall be determined by agreement between the Railways Commissioners of the Commonwealth and of the State;

(c) If in the opinion of the Railways Commissioners of the Commonwealth and of the State it would be impracticable or dangerous on any portion of the said railway from Red Hill to Adelaide to use a railway with a third rail then in lieu of laying a third rail on such portion a new railway on a 4' 8½" gauge shall be constructed by the State at the expense of the Commonwealth over a route to be determined by agreement between the said Commissioners to take the place of the said portion of railway but so always that there will be a continuous railway on a 4' 8½" gauge from Port Augusta to the Central Railway Station in Adelaide.

(d) The Commonwealth may if it think fit supply to the State any rails fastenings sleepers or other material necessary for the purpose of carrying this clause into effect and the State shall in carrying this clause into effect use any rails fastenings sleepers and material so supplied by the Commonwealth. Any rails fastenings sleepers or other necessary material not so supplied by the Commonwealth shall be provided by the State at the expense of the Commonwealth.

7. The Commonwealth will at the expense of the State during the construction of the railway from Port Augusta to Red Hill lay from a point near Port Pirie to Red Hill a third rail on the said railway so that there will be a continuous railway on a 5' 3" gauge from Adelaide to the said point near Port Pirie.

8. For the purpose of this agreement the expense of laying a third rail or constructing a new railway under clause 6 (c) hereof shall be deemed to include the expense of doing all work and providing all station facilities and points and apparatus necessary to enable both gauges of the railway to be used.

9. (a) The Commonwealth hereby grants to the State free of charge permanent running rights over each portion of any railway of the Commonwealth upon which a third rail has been laid under this agreement (the extent and exercise of such rights to be determined by agreement between the Railways Commissioners of the Commonwealth and of the State) together with the use in common with the Commonwealth of all stations yards buildings and other accessories used in connexion with such portion but so as not to interfere with the proper control working and maintenance by the Commonwealth of such portion.

(b) The State hereby grants to the Commonwealth free of charge permanent running rights over each portion of any railway of the State upon which a third rail has been laid under this agreement (the extent and exercise of such rights to be determined by agreement between the Railways Commissioners of the Commonwealth and of the State) together with the use in common with the State of all stations, yards, buildings and other accessories used in connexion with such portion but so as not to interfere with the proper control working and maintenance by the State of such portion.

10. (a) Forthwith after a third rail has been laid upon a railway of the State under this agreement the State Railway Comptroller of Accounts shall give to the Commonwealth a certificate stating the total cost to the State of the construction of the portion or portions of the railway upon which the third rail is laid.

(b) Forthwith after a third rail has been laid upon a railway of the Commonwealth under this agreement the Commonwealth Railway Comptroller of Accounts shall give to the State a certificate stating the total cost to the Commonwealth of the construction of the portion of the railway upon which the third rail is laid.

(c) For the purposes of this clause the total cost of a portion of a railway shall not include the cost of laying the third rail on such portion but shall include the cost of the station facilities used in connection with the traffic upon such portion of the railway.

(d) Before any certificate is given under this clause each party to this agreement shall give to the other facilities for examining and checking the figures in relation to which the certificate is proposed to be given and the data from which such figures are prepared and shall consider any representations made by the other in relation to the accuracy or the inclusion or exclusion of any items of ^{cost}~~cash~~ proposed to be included in the total cost to be stated in such certificate.

(e) A certificate given under this clause shall as between the parties to this agreement be conclusive evidence of the cost of construction of the portion or portions of the railway referred to in the certificate.

11. (a) As from the date upon which a portion of a railway of the State upon which a third rail has been laid under this agreement is first used by the Commonwealth for public traffic—

(i.) the Commonwealth shall keep accurate records on a ton-mile basis of the gross weight of all traffic of the Commonwealth over such portion; and

(ii.) the State shall keep accurate records on a ton-mile basis of the gross weight of all traffic of the State over such portion.

(Itd.)
S.M.B.
J.G.

(b) As from the date upon which a portion of a railway of the Commonwealth upon which a third rail has been laid under this agreement is first used by the State for public traffic—

(i.) the Commonwealth shall keep accurate records on a ton-mile basis of the gross weight of all traffic of the Commonwealth over such portion; and

(ii.) the State shall keep accurate records on a ton-mile basis of the gross weight of all traffic of the State over such portion.

(c) For the purposes of this clause traffic means wheeled traffic of every description including passenger goods mixed and other trains rail motor cars and light engines and the contents of such trains motor cars and engines;

(d) Before a certificate is given under this clause each party to this agreement shall give to the other facilities for examining and checking the figures in relation to which the certificate is proposed to be given and the data from which such figures are prepared and shall consider any representations made by the other in relation to the accuracy or the inclusion or exclusion of any items proposed to be included in the ton-mileage to be stated in such certificate;

(e) A certificate by the Commonwealth Railways Commissioner stating the ton-mileage of the traffic of the Commonwealth over a portion of railway shall be accepted by the State as conclusive evidence of the matter stated;

(f) A certificate by a State Railways Commissioner stating the ton-mileage of the traffic of the State over a portion of railway shall be accepted by the Commonwealth as conclusive evidence of the matter stated.

12. (a) In respect of each portion of a railway of the State upon which a third rail has been laid under this agreement the Commonwealth shall during the continuance of this agreement pay to the State sums calculated from time to time according to the following formula:—

$$\frac{\text{Ton-mileage of Commonwealth}}{\text{Total ton-mileage.}} \times (\text{interest plus working expenses}).$$

(b) In the said formula the expression—

“Ton-mileage of Commonwealth” means the ton-mileage of the traffic of the Commonwealth during the period in respect of which the calculation is made over the portion of railway as certified by the Commonwealth Railways Commissioner under clause 11 (d) hereof.

“Total ton-mileage” means the sum of the ton-mileage of the traffic of the Commonwealth and of the State respectively during the period in respect of which the calculation is made over the portion of railway as respectively certified by the Commonwealth Railways Commissioner and a State Railways Commissioner under clause 11 (d) and (e) hereof.

“Interest” means interest upon the total cost to the State of the construction of the portion of railway (as certified by the State Railway Comptroller of Accounts as aforesaid) for the period in respect of which the calculation is made at a rate certified by the Under Treasurer of the State to be equal to the average effective rate of interest paid during the said period by the State in respect of all loans of the State.

“Working expenses” means the total cost to the State during the period in respect of which the calculation is made of maintaining and working the portion of railway as distinguished from the locomotives and rolling stock thereon and includes the cost of maintenance and repairs to station facilities and the permanent way and works the cost of station and signal staffs and local supervision and all other charges properly attributable to the traffic on such portion of railway but does not include the expenses of train crews or of the provision, running or maintenance of locomotives and rolling stock;

(c) The first calculation for the purpose of this clause shall be in respect of the period commencing on the date when the portion of railway is first used by the Commonwealth for public traffic and ending on the thirtieth day of June next thereafter;

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(d) After the end of the said first period each calculation for the purpose of this clause shall be in respect of the period of twelve months ending on the thirtieth day of June next after the termination of the preceding period;

(e) If any new railway is constructed under clause 6 (c) hereof the Commonwealth will bear the whole cost of maintenance and repair of such new railway but the cost of working such new railway shall be included in the "working expenses" referred to in subclause (b) of this clause. For the purposes of this subclause the cost of maintenance and repair of station facilities used in connection with the traffic on such new railway and the cost of station and signal staffs and local supervision and all charges (other than maintenance and the expenses of train crews or of the provision running or maintenance of locomotives and rolling stock) properly attributable to the traffic on such new railway shall be included in the cost of working such new railway.

13. (a) In respect of each portion of a railway of the Commonwealth upon which a third rail has been laid under this agreement the State shall during the continuance of this agreement pay to the Commonwealth sums calculated from time to time according to the following formula:—

$$\frac{\text{Ton-mileage of State}}{\text{Total ton-mileage}} \times (\text{interest plus working expenses}).$$

(b) In the aforesaid formula the expression—

"Ton-mileage of State" means the ton-mileage of the traffic of the State during the period in respect of which the calculation is made over the portion of railway as certified by a State Railways Commissioner under clause 11 (e) hereof;

"Total ton-mileage" means the sum of the ton-mileage of the traffic of the State and of the Commonwealth respectively during the period in respect of which the calculation is made over the portion of railway as respectively certified by the Commonwealth Railways Commissioner and a State Railways Commissioner under clause 11 (d) and (e) hereof;

"Interest" means interest upon the total cost to the Commonwealth of the construction of the portion of railway (as certified by the Commonwealth Railways Comptroller of Accounts as aforesaid) for the period in respect of which the calculation is made at a rate certified by the Commonwealth Auditor-General to be equal to the average effective rate of interest paid by the Commonwealth during the said period in respect of all loans of the Commonwealth;

"Working expenses" means the total cost to the Commonwealth during the period in respect of which the calculation is made of maintaining and working the portion of railway as distinguished from the locomotives and rolling stock thereon and includes the cost of maintenance and repairs to station facilities and the permanent way and works the cost of station and signal staffs and local supervision and all other charges properly attributable to the traffic on such portion of railway but does not include the expenses of train crews or of the provision, running or maintenance of locomotives or rolling stock;

(c) The first calculation for the purpose of this clause shall be in respect of the period commencing on the date when the portion of railway is first used by the State for public traffic and ending on the thirtieth day of June next thereafter;

(d) After the end of the said first period each calculation for the purpose of this clause shall be in respect of the period of twelve months ending on the thirtieth day of June next after the termination of the preceding period.

14. In this agreement the words "station facilities" wherever occurring mean such buildings appurtenances conveniences matters and things as are determined by agreement between the Railways Commissioners of the Commonwealth and of the State to be included within those words for the purposes of the clause in which those words appear.

15. The sums payable respectively by the Commonwealth and by the State under clauses 12 and 13 of this agreement in respect of any period shall so far as they extend be set off against each other and if after such set off is made a balance remains due by either party to the other party by whom such balance

is due shall pay such balance to the party to whom it is due within one calendar month after demand has been made for payment thereof.

16. The State will grant to the Commonwealth free of charge—

(a) any Crown lands and any leased lands off the Crown in respect of which the Commonwealth shall have acquired the rights of the lessees; and

(b) any stone soil gravel and timber upon any Crown lands or leased lands of the Crown from which the State has a right to take the same

certified by the Commonwealth Railways Commissioner to be required by the Commonwealth in connexion with the construction maintenance or working of any railway which the Commonwealth may construct under this agreement.

17. If the portion of the Trans-continental Railway mentioned in clause 4 hereof is to be constructed from a point on the Kalgoorlie to Port Augusta Railway then when such portion is open to traffic to a point as far north as Oodnadatta—

(a) the Commonwealth may discontinue traffic on and if it thinks fit take up and remove the portion of the Port Augusta to Oodnadatta railway lying between Marree and Oodnadatta; and

(b) the Commonwealth may if it thinks fit construct a new railway from Marree to a point on the Queensland border and the provisions of clause 16 hereof shall apply to such new railway; and

(c) the route of the said railway from Marree to the Queensland border and all other matters connected therewith shall be determined by the Commonwealth regard being had at all times to the development of the country and the cost of construction of and the estimated revenue from the railway; and

(d) the Commonwealth shall not without the consent of the State charge fares or rates for the transportation of passengers parcels or goods on the railway from Port Augusta to Marree exceeding the fares or rates charged by the State for the time being for the transportation of passengers parcels and goods of a similar class for a similar distance on the railways of the State and shall not without the like consent reduce the services provided at the present time on the said railway from Port Augusta to Marree.

18. If the portion of the Trans-continental Railway mentioned in clause 4 hereof is to be a railway extending from Oodnadatta to Alice Springs the Commonwealth shall not without the consent of the State charge fares or rates for the transportation of passengers parcels or goods on the railway between Port Augusta and Oodnadatta exceeding the fares or rates for the time being charged by the State for the transportation of passengers parcels and goods of a similar class over a similar distance on the railways of the State and shall not without the like consent reduce the services provided at the present time on the said railway from Port Augusta to Oodnadatta.

19. The provisions of clauses 17 and 18 shall apply and be binding on the parties hereto notwithstanding anything to the contrary contained in the agreement in the schedule to the *Northern Territory Acceptance Act* 1910 or any amendment thereof.

20. The Commonwealth will not accept goods for transport where the transportation begins at Adelaide or at the point of crossing by the Commonwealth Railways of the State Railway to Port Pirie (hereinafter called "the Port Pirie Crossing") or between those places and ends at the said Port Pirie crossing or Adelaide or between those places.

21. The Commonwealth shall not without the consent of the State—

(a) charge a lower sum for the transportation of any passengers parcels or goods from Adelaide to a station beyond the said Port Pirie crossing or from a station beyond the said Port Pirie crossing to Adelaide than the sum for the time being charged by the State for the transportation of passengers parcels or goods of a similar class and a similar quantity from Adelaide to the said Port Pirie crossing; and

(b) charge for the transportation of passengers or parcels (where the transportation begins at Adelaide or at the said Port Pirie crossing or between those places and ends at the said Port Pirie crossing or Adelaide or between those places) lower fares or rates than the fares or rates for the time being charged by the State for a similar service between the same places.

22. Any notice or demand to be given or made by the Commonwealth to the State under this agreement shall be deemed to have been duly given or made if signed by or on behalf of the Commonwealth Railways Commissioner and posted by prepaid post addressed to the South Australian Railways Commissioner.

23. Any notice or demand to be given or made by the State to the Commonwealth under this agreement shall be deemed to have been duly given or made if signed by or on behalf of a State Railways Commissioner and posted by prepaid post addressed to the Commonwealth Railways Commissioner.

IN WITNESS whereof the Commonwealth of Australia and the State of South Australia have executed these presents.

Signed by the Prime Minister of the Commonwealth of }
Australia for and on behalf of the said Commonwealth in } S. M. BRUCE.
the presence of—

W. C. HILL.

Signed by the Premier of the State of South Australia for }
and on behalf of the said State in the presence of— } J. GUNN.

W. C. HILL.

THE SECOND SCHEDULE.

Act No. 1724 of 1925.—Compulsory Acquisition of Land Act, 1925.

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.

NOTARIES PUBLIC

see Legal Practitioners.