

An Act to authorise the “Yongaleatha Marble, Flag, and Flux Company (Limited),” and their assigns, to construct and maintain a tramway from their flux quarries and properties, in the parish of Gairdner’s Creek, county of Mootwingie, in the Colony of New South Wales; and to use horse, steam, or other motive power upon the said tramway; and to carry fuel and timber, and also all marble, flagging, and fluxing material, and also all plant or material necessary for the development or working of the quarries, properties, and tramways to and from their said flux quarries and properties, in the parish of Gairdner’s Creek aforesaid, to a point at Broken Hill, in the Colony aforesaid, connecting with the tramway system of the Broken Hill mines. [30th December, 1891.]

YONGALEATHA  
MARBLE, FLAG, AND  
FLUX COMPANY  
(LIMITED).

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**W**HEREAS the “Yongaleatha Marble, Flag, and Flux Company (Limited),” hereinafter called the said Company, is a company duly incorporated in the Colony of South Australia, under the “Companies Act, 1864,” for the purposes of *inter alia* working the whole or such part or parts of their properties situate in the counties of Mootwingie and Yancowinna, and which properties are known as the Yongaleatha Quarries, as marble and flag quarries, or for ironstone or other fluxes, or for silver, lead, and other materials, and supplying the district of Broken Hill, the Barrier Mines, and other places with the marble, flagging, flux, or other material obtained therefrom :

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therefrom: And whereas large quantities of marble, flagging, and fluxing material exist and are being won at the quarries of the said Company, in the parishes of Gairdner's Creek and Yancowinna Creek North: And whereas large quantities of timber suitable for fuel exist upon the said properties of the said Company, situate in the parishes and counties aforesaid: And whereas for the purpose of facilitating the carriage of fuel and timber and the products thereof as aforesaid, and also of the said marble, flagging, and fluxing material to and from the said quarries and properties as aforesaid, the said Company are 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, from the said quarries and properties, in the said parish of Gairdner's Creek, to the point at Broken Hill, in the said Colony, set out in the said Schedule: And whereas such tramway cannot be made without Legislative authority: And whereas the construction of the said proposed tramway would be largely for the benefit of the mining public by materially assisting to lessen the expense of developing the silver, lead, and other mining and commercial industries in the Barrier Ranges, and also would be the means of supplying the district of Broken Hill with cheap fuel, and it is therefore advisable to authorize, by Legislative enactment, the construction, maintenance, and working of the said proposed tramway, subject to the provisions hereinafter contained: 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:—

Authority to  
construct tramway.

1. It shall be lawful for the said Company or their assigns, upon the terms and conditions, and subject to the provisions hereinafter contained, to make, form, lay down, construct, maintain, and work a tramway for the carrying of fuel, timber, marble, flagging, and fluxing materials, and of all persons engaged, and all goods and plant and materials necessary in and about the working thereof from and to the said quarries and properties in the said parishes of Gairdner's Creek and Yancowinna Creek North by the route and along and over the roads, streets, lands, and reserves, both public and private, described in the said Schedule hereto, and to take and use so much of the said roads, streets, lands, and reserves, both public and private, as may be required for the purposes of such tramway, but so that the same shall not occupy in part thereof on private lands a greater space in breadth than sixteen feet, and on public lands in breadth sixty-six feet, including the support and foundations thereof.

Levels of line.

2. The gauge of the said tramway shall be three feet six inches, and where it traverses public thoroughfares 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 said Company or their assigns shall maintain in perfect order and repair the said tramway; and where the said tramway traverses public thoroughfares shall maintain perfect and keep in order and repair the pavements of the same between the rails of the said 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 tramway.

Tramway to remain  
the property of the  
said Company and  
their assigns.

3. The tramway and the material thereof shall not cease to be the property of the said Company or their assigns by reason of the same being laid as aforesaid.

Authorized persons  
to have rights over  
streets.

4. The said Company and their assigns, and all other persons duly authorized, shall have all necessary rights over such portion of the roads, streets, and lands described in the First Schedule to this

Act

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Act as are required for the construction, forming, laying down, maintenance, repair, working, completion, and use of the said tramway: Provided that there shall be no interference with ordinary traffic beyond what is reasonable and necessary for such purpose.

5. The tramway shall be for the use of the Company and their assigns, and of all persons engaged by them in and about the carriage of fuel and timber and the said marble, flagging, fluxing, or other commercial industries, and for the carriage of all plant, goods, and things necessary in and about the same, and shall be confined to the conveyance of such marble, flagging, and fluxing material, and fuel, timber, and plant as aforesaid, and of all goods and things necessary in and about the same, and of all persons engaged in and about the same as aforesaid to and from the said quarries and properties of the said Company.

6. It shall be lawful for the said Company and their assigns and any company or persons using or working the said tramway to employ horses, steam, or other motive power, and carriages, waggons, trucks, or other vehicles to be drawn thereby, and to carry fuel, timber, plant, marble, flagging, and fluxing materials, and all other necessary things therewith appertaining upon the said tramway, and all persons engaged in and about the same.

7. In case of accidents or slips happening or being apprehended to the cuttings, embankments, or other works of the said tramway, it shall be lawful for the said Company and their assigns, and their agents, workmen, and servants to enter upon the land 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 said Company or their assigns or their agents shall within fourteen days after such entry make a report to the Secretary for Public Works specifying the nature of such accident or apprehended accident, and of the works done or necessary to be done, and such powers shall 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.

8. The said Company or their assigns shall not be entitled to any mines of coal, iron, slate, or other minerals under any land whereof the surface is vested in the said Company or their assigns 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 said Company and their assigns: Provided that where such tramway passes over Crown lands the said Company and their assigns shall pay to the Crown such annual rent not exceeding two shillings per acre for such Crown lands passed over by such tramway as the Minister for Lands may direct.

9. If within twenty-eight days of the passing of this Act the said persons through whose lands the tramway shall pass, or any of them, and the said Company or their assigns shall not agree as to the amount

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amount of compensation to be paid by them for the said lands belonging to the said parties, or any of them, or for any damage that may be sustained by them or him by reason of the execution of the works, or if any other question as to compensation shall arise under this Act, the amount of such compensation shall be settled by arbitrators in manner hereinafter mentioned, that is to say, unless the Company or their assigns and the said persons concur in the appointment of a single arbitrator the Company or their assigns and the said person or persons on the request of the other shall nominate and appoint an arbitrator to whom such dispute or other matter shall be referred, and any appointment of an arbitrator shall be under the seal of the Company, or the hand or hands, seal or seals of their assigns, and the hand and seal of such person or persons respectively, and such appointment shall be delivered to the arbitrator or arbitrators, and shall be deemed a submission to arbitration on the part of the Company or their assigns or party by whom the same shall be made; and after any such appointment shall have been made neither the Company or their assigns, or the party or parties shall have power to revoke the same without the consent of the other, nor shall the death of the party or parties operate as a revocation; and if for the space of fourteen days after such dispute or other matter shall have arisen, and after a request in writing shall have been served by the Company or their assigns or party on the party or Company or their assigns to appoint an arbitrator, the Company or their assigns or the last-mentioned party shall fail to appoint such arbitrator, then upon such failure it shall be lawful for the Attorney-General for the time being of the said Colony, on the application of the Company or their assigns, or the party who has appointed an arbitrator, to appoint such arbitrator to act on behalf of the Company or their assigns or party or parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final and conclusive.

Proceedings in case  
of disability of  
arbitrator.

10. If before the matter so referred shall be determined, any arbitrator appointed by the Company or their assigns or the party or parties shall die, or become incapable, or refuse, or for fourteen days neglect to act as arbitrator, the Company or their assigns or the party or parties by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the Company or their assigns or party for that purpose he fail to do so, the remaining or other arbitrator may proceed alone, and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such, his death, refusal, neglect, or disability as aforesaid.

Appointment of  
umpire.

11. Where more than one arbitrator shall have been appointed such arbitrators shall before they enter upon the matters referred to them nominate and appoint in writing under their hands an umpire to decide any matters on which they shall differ, or which shall be referred to them under the provisions of the Act; and if such umpire shall die, or refuse, or for seven days neglect to act, after being called upon so to do by the arbitrators or either of them, they shall forthwith, after such death, refusal, or neglect appoint another umpire in his place, and the decision of every such umpire upon the matters so referred to him shall be final.

Neglect to appoint  
umpire.

12. If in either of the cases aforesaid the arbitrators shall refuse, or for seven days after request of the Company or their assigns or party or parties to such arbitrators, neglect to appoint an umpire, it shall be lawful for the Attorney-General for the time being of the said Colony, on the application of the Company or their assigns,

or

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or party to such arbitration, to appoint an umpire, and the decision of such umpire on the matters on which the arbitrators differ or which shall be referred to him under this Act shall be final.

13. If when a single arbitrator shall have been appointed such arbitrator shall die, or become incapable, or shall refuse, or for fourteen days neglect to act, before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such arbitrator had not been appointed.

In case of disability of single arbitrator.

14. If when more than one arbitrator shall have been appointed, and when neither of them shall die, become incapable, refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within fourteen days after the day on which the last of such arbitrators shall have been appointed, or within such extended term (if any) as shall have been appointed for that purpose by both of such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Arbitrators failing to make their award, matters referred to umpire.

15. The said arbitrator or arbitrators or the said umpire may call for the production of any documents in the possession or power of the Company or their assigns, or party or parties, which they or he may think necessary for determining the question in dispute, and may examine the Company's or their assigns' witnesses, and the party or parties or his or their witnesses on oath, and administer the oaths necessary for that purpose.

Arbitrators may order production of documents, &c.

16. Before any arbitrator or umpire shall enter upon the consideration of any matter referred to him, he shall, in the presence of a Justice of the Peace, make and subscribe the following declaration (that is to say):—

Declaration by arbitrators or umpire.

I, A.B., do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the "Yongaleatha Marble, Flag, and Flux Company Act."

Made and subscribed at            this            day of            in the  
year of our Lord one thousand eight hundred and ninety-

Before me,—

C.D.

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

17. All the costs of any such arbitration and incident thereto shall be in the discretion of the arbitrator or arbitrators or umpire, and the costs of the arbitrator, arbitrators, or umpire shall be borne by the Company or their assigns, or party or parties in equal proportions unless the amount awarded shall be one-fourth or more less than the amount which shall have been offered by the said Company or their assigns, in which case the whole costs of the arbitration, and also the costs of and incidental to the said arbitration shall be paid by the claimant or claimants: Provided that if either the Company or their assigns or the party or parties shall be dissatisfied with the costs allowed by the said arbitrator or arbitrators or umpire as aforesaid, the costs shall be taxed by the Prothonotary of the Supreme Court of the Colony of New South Wales, or other proper officer of the said Supreme Court, and the amount allowed by such officer shall be the amount of costs to be paid.

Cost of arbitration how to be borne.

Costs may be taxed.

18. The arbitrator, arbitrators, or umpire shall deliver his or their award in writing to the said Company or their assigns who shall retain the same, and shall forthwith on demand, at their own expense, furnish a copy thereof to the other party; and shall at all times on demand

Arbitrators or umpire to deliver award to the said Company and their assigns.

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Compensation to be paid within sixty days after publication of award.

demand produce the said award, and allow the same to be inspected and examined by such party or any person appointed by him for that purpose, and the amount awarded shall be paid within sixty days after the publication of the award.

Submission may be made a rule of Court.

19. The submission to any such arbitration may be made a rule of the Supreme Court of the Colony of New South Wales on the application of either of the parties.

Award not to be set aside for irregularity.

20. No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form.

Compensation in cases of negligence.

21. The said Company or their assigns shall make compensation and satisfaction to be ascertained and recovered in case of difference in the manner hereby provided, for temporary, permanent, or recurring injury, or for any other damage, loss, costs, charges which may in anywise be occasioned to the owners and occupiers of the lands through which the said tramway shall pass by the non-performance or negligent performance by the said Company or their assigns of any of the matters or things hereby required or authorized to be performed by them.

Compensation in cases of temporary possession.

22. In every case where the said Company or their assigns shall take temporary possession of lands by virtue of the powers hereby granted, it shall be incumbent on them within three months after entry upon such land, upon being required so to do, to pay to the occupier or occupiers of said lands the value of any crop or dressing that may be thereon, and damaged or injured by such entry, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of such entry; and shall also from time to time during their occupation of the said lands pay half-yearly to such occupier or occupiers, or to the owner or owners of the lands, as the case may require, a rent to be fixed by two Justices, in case the Company or their assigns and the party or parties differ; and shall also within twelve months after such entry pay to such owners or occupiers, or deposit in the bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise, as regards the said lands, of the powers hereby granted, including the full value of all clay, stone, gravel, sand, and other things taken from such lands.

Proceedings in absence of owner.

23. If the owner or owners of any lands required to be taken for the construction of the said tramway is absent from the Colony, or cannot upon diligent inquiry be found, or is under disability, or if any such lands are vested in persons who have respectively only limited or qualified interests therein, and who cannot enter into binding agreements with the said Company or their assigns for the acquisition of such lands, or join in submitting their claims for compensation to arbitration as hereinbefore provided, the purchase money or compensation payable by the said Company or their assigns in respect of such lands shall be determined by the valuation of a surveyor to be nominated as hereinafter mentioned.

Justices to appoint surveyor in certain cases.

24. Upon application by the said Company or their assigns to two Justices, and upon such proof as may be satisfactory to them, that there is no person in the Colony or to be found who can enter into a binding contract with the said Company or their assigns, or join with the said Company or their assigns in submitting his claims for compensation to arbitration in respect of any lands required to be taken for the construction of the said tramway, such Justices shall by writing under their hands nominate a licensed surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

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25. Before such surveyor shall enter upon the duty of making such valuation as aforesaid, he shall, in the presence of such Justices, or one of them, make and subscribe the following declaration at the foot of such nomination, that is to say : Declaration by surveyor.

I, A.B., do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

Made and subscribed at                      this                      day of                      in the  
year of our Lord one thousand eight hundred and ninety-  
Before me,—

C.D.

And if any such surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

26. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the said Company or their assigns; and they shall at all times produce the said valuation and documents on demand to all parties interested in the said lands comprised in such valuation. Production of valuation, &c.

27. All the expenses of and incident to any such valuation shall be borne by the said Company or their assigns. Costs of valuation—how borne.

28. If the amount of compensation determined by any such surveyor does not exceed the sum of fifty pounds, it shall, except in the case where the owner is absent from the Colony or cannot be found, be paid by the said Company or their assigns to the person or persons for the time being entitled to the rents and profits of lands in respect whereof the same shall be payable for his or their own use and benefit, or in the case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any such person or persons, then such money shall be paid for their use to their respective husbands, guardians, committees, or trustees of such persons. Compensation not exceeding £50 how to be dealt with.

29. If the amount of compensation determined by any such surveyor as aforesaid exceeds the sum of fifty pounds, or in the case where the owner is absent from the Colony or cannot be found, whether it exceeds the sum of fifty pounds or not, it shall be paid by the said Company or their assigns into the hands of the Master in Equity of the said Supreme Court in the matter of this Act, in trust for the parties interested in the lands in respect of which it is paid in; and a certificate from the said Master in Equity of the fact of the money being so paid in shall be a sufficient discharge to the said Company or their assigns for the money so paid: Provided that all moneys so paid in shall be dealt with by the said Supreme Court in the same manner in all respects as moneys paid in under an Act passed in the twenty-first year of Her present Majesty, and intituled "*An Act for better securing Trust Funds, and for the relief of Trustees*": And shall be subject in all respects to the provisions of the said Act, and all rules of the said Court made thereunder. Compensation how dealt with in absence of owner.

30. If in any case in which, according to the provisions of this Act or of any subsequent Act in respect of this Act, the said Company or their assigns are authorized to enter upon and take possession of any lands required for the purposes of the said tramway, the owner or owners, or occupier or occupiers of any such lands, or any other person or persons shall refuse to give up possession thereof, or hinder the said Company or their assigns from entering upon or taking possession of the same it shall be lawful for the said Company or their assigns to issue their warrant to the Sheriff to deliver possession of the same to the person or persons appointed by the said Company or their assigns in such warrant to receive the same, and upon receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly to Cases of dispute Sheriff may issue warrant.

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to such person or persons, and the costs accruing by reason of the issuing and execution of such warrant, and which said costs shall be settled by the Sheriff, shall be paid by the party or parties so refusing to give possession, and the amount of such costs shall be deducted and retained by the said Company or their assigns from the compensation, if any, then payable to such person or persons refusing to give possession, or if no such compensation shall be payable to such person, or if the same be less than the amount of such costs, then such costs or the excess thereof beyond the amount of such compensation if not paid on demand shall be levied by distress, and upon application to any Justice of the Peace for that purpose he shall issue his warrant accordingly.

Service of notice on owners of lands.

31. All notices required to be served by the said Company or their assigns upon the party or parties interested in or entitled to sell any such lands shall either be served personally on such party or parties or left at his or their usual place of abode (if any such can after diligent inquiry be found), and in case any such party or parties shall be absent from the Colony, or cannot be found after diligent inquiry, shall be left with the occupier of such lands, or if there be no such occupier shall be affixed upon some conspicuous part of such lands.

Power of purchase of railway by Government.

32. At any time the Governor, with the advice of the Executive Council, may, if he think fit, purchase such tramway upon giving to the said Company or their assigns three months' notice in writing of his intention to do so. If the amount tendered for the purchase of the property be considered inadequate by the said Company or their assigns, the amount shall be ascertained by assessment in terms of the "Public Lands Acquisition Act."

Power to assign.

33. It shall be lawful for the said Company at any time, by any instrument or deed in writing, to assign and transfer all the rights, powers, privileges, benefits, and advantages conferred upon them by this Act to any person or persons, or to any duly incorporated company or companies, and upon any such assignment or transfer being executed the person or persons or duly incorporated company or companies in whose favour such assignment or transfer is made shall then stand in the place of the said Company, and shall have all the rights, powers, benefits, privileges, and advantages conferred upon the said Company by this Act.

Commencement and completion of work.

34. The works in connection with the construction of the said tramway hereby authorized must be commenced within twelve months from the passing of this Act, and the said tramway must be completed within two years from the date of the passing of this Act.

Short title.

35. This Act may for all purposes be cited as the "Yongaleatha Marble, Flag, and Flux Company Act of 1891."

THE FIRST SCHEDULE HEREINBEFORE REFERRED TO.

Commencing at a point on the extensions of the Silverton Tramway to be determined on mineral lease number thirty-nine, parish of Picton, county of Yancowinna; thence north-easterly through mineral leases numbers forty, sixty-eight, seventy-seven, twenty-eight, and forty-five about one mile; thence through Mount Gipps leasehold area twenty-five chains; thence north-easterly through special leases numbers 88/12, and 88/24 thirty chains; thence north-easterly through Mount Gipps leasehold area about two and three-quarter miles; thence north-easterly through improvement purchase number fifty-two, parish of Bolairo, thirty chains; thence north-easterly through Mount Gipps leasehold area about two and a half miles; thence north-easterly through improvement purchase number one, parish of Bolairo, thirty-five chains; thence north-easterly through Mount Gipps leasehold area about six and a quarter miles; thence through improvement purchase number one, parish of Moorkaie, forty-chains; thence north-easterly through Mount Gipps leasehold area about fifteen miles; thence north-easterly through the parish of Gairdner's Creek about four and a half miles to mineral lease number twenty, parish of Gairdner's Creek, county of Yancowinna—making a total distance from Broken Hill to the Yongaleatha Flux Quarry of about thirty-three and a half miles.