

Border Railways Act 1922 No 16

[1922-16]



New South Wales

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Border Railways Act 1922 No 16



New South Wales

An Act to ratify and provide for carrying out an agreement between the States of New South Wales and Victoria respecting the construction, maintenance, and operation of certain lines of railway from the State of Victoria into the State of New South Wales, the construction and maintenance of certain bridges over the River Murray, and other works; to amend the [Public Works Act 1912](#) and certain other Acts; and for purposes connected therewith.

WHEREAS the Premiers of the States of New South Wales and Victoria have entered into an agreement, a copy of which is set out in the Schedule, subject to ratification by the Parliaments of the said States during the year one thousand nine hundred and twenty-two:

And whereas it is desirable to ratify and to provide for carrying out the said agreement:

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

1 Name of Act

This Act may be cited as the [Border Railways Act 1922](#).

2 Act to bind the Crown

This Act shall bind the Crown.

3 Commencement

This Act shall come into force on the first day of January, one thousand nine hundred and twenty-three.

4 Definitions

In this Act, unless inconsistent with the context or subject matter:

Land includes Crown lands and buildings, messuages, tenements and hereditaments of any tenure and any easement, right or privilege in, over, or affecting any land.

The agreement means the agreement, a copy of which is set out in Schedule 1, as amended by the agreement a copy of which is set out in Schedule 2.

Victorian Authority means the State Transport Authority established under the *Transport Act 1983* of Victoria.

5 Ratification of agreement

- (1) Subject to this Act, the agreement a copy of which is set out in Schedule 1 is hereby ratified and approved and shall take effect on the coming into force of this Act, and all matters and things agreed to be done by or on behalf of the Government of New South Wales are hereby sanctioned and authorised.
- (2) The agreement a copy of which is set out in Schedule 2 is hereby ratified and approved.

6 Authority to State of Victoria to construct certain railways etc in NSW

The Government of the State of Victoria is hereby authorised and empowered to construct and maintain the railways and other works in New South Wales which by the agreement are to be constructed by that State, and also such of the bridges over the River Murray and the approaches thereto as by subsequent agreement in accordance with the agreement fall to be constructed by that State, and such railways, works, bridges, and approaches may be constructed notwithstanding the provisions of the *Public Works Act 1912* or any other Act, and in respect thereof the Constructing Authority shall be the Victorian Authority, which shall have all the powers of a Constructing Authority under the *Public Works Act 1912*. The railways, works, bridges, and approaches mentioned in the agreement shall be deemed to be “authorised works” within the meaning of the *Public Works Act 1912*.

7 Constructing Authority of certain bridges etc

The Secretary for Public Works is empowered to agree as to who should be the Constructing Authority to construct the bridges and approaches mentioned in clauses one, thirteen, and twenty-three of the agreement; and in the event of it being agreed that the Secretary for Public Works should be the Constructing Authority of one or more of such bridges and approaches, the carrying out of the work of constructing the said bridges and approaches is hereby sanctioned, and the said Secretary is empowered to carry out the said works.

8 Resumption by Governor

- (1) The Governor may resume or acquire, subject to the provisions of the *Public Works Act 1912*, any land required in New South Wales for or incidental to any railway referred to in the agreement, and for that purpose the Minister for Public Works for the State of New South Wales shall have all the powers of a Constructing Authority under the said Act. Such land when so resumed or acquired shall be vested for the purposes of the agreement, in such corporation constituted by or under any Act of the Parliament of Victoria as may be nominated for the purpose by the Governor of Victoria.

The vesting under this subsection shall be effected by the conveyance or transfer by the Minister for Public Works of so much of the land resumed or acquired as is required for purposes of or incidental to any such railway.

- (2) Any land resumed or acquired under this section which is not required for purposes of or incidental to any railway referred to in the agreement may be sold, leased or otherwise dealt with under the *Public Works Act 1912*, in all respects as if it were land taken under the provisions of that Act for an authorised work and not required for the purposes of any authorised work or may be reconveyed or retransferred to the persons entitled in full or part satisfaction of any claim for compensation in respect of the resumption or acquisition of the land.

In any sale made pursuant to this subsection an easement over or a right of using the whole or any part of the land sold may be reserved.

9 Control and management of certain railways by Government of Victoria

The Government of Victoria shall, subject to the agreement, have the right to control and manage any railway in New South Wales referred to in the agreement, and the Victorian Authority may, in respect of such control and management, exercise all the powers which are by law conferred on the Victorian Authority in respect of railways in the State of Victoria.

10 Conditions and wages on railways constructed by Government of Victoria

Notwithstanding anything contained in the *Industrial Arbitration Act 1940*, it shall be lawful for the Government of the State of Victoria, or the Victorian Authority, in the construction, management and control of any work by this Act or the agreement authorised to be carried out by the said State in New South Wales, to observe the same conditions and pay the same wages as prevail or are then being paid by the Victorian Authority in respect of similar work in the State of Victoria.

11 Repeal of Act does not affect operation of certain provisions

- (1) Despite the repeal of the *Border Railways (Grain Elevators) Amendment Act 1957*, sections 1 (2) and 2-6 of that Act continue to have effect and are taken to have been transferred to this Act.
- (2) Sections 1 (2) and 2-6 of the *Border Railways (Grain Elevators) Amendment Act 1957* are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

Schedule 1 The Agreement

AGREEMENT made the fourteenth day of September, one thousand nine hundred and twenty-two, between the Honourable Sir George Warburton Fuller, K.C.M.G., Premier of the State of New South Wales, for and on behalf of that State of the one part, and the Honourable Harry Sutherland Wightman Lawson, M.L.A., Premier of the State of Victoria, for and on behalf of that State of the other part, whereby it is agreed as follows:

1.

Two Engineers, one of whom shall be appointed by the Government of New South Wales and one by the Victorian Government, shall recommend the sites of two bridges to be constructed between a point 3 miles upstream from Mildura Wharf and downstream to a point near the Wentworth Township.

2.

The Engineers shall submit the designs of the bridges and approaches within the limits of the flood area, and suggest the materials of which they are to be constructed.

3.

Should the Engineers disagree upon the matters referred to, the questions in dispute shall be referred to arbitration in accordance with clause 50 hereof.

4.

Such bridges and approaches, their locations and designs, shall be approved by the Governments of New South Wales and Victoria.

5.

The bridges to be so constructed that they will provide for road traffic, and also railway traffic for both the 4 ft. 8½ in. and 5 ft. 3 in. gauges, and not offer any impediment to the navigation of the Murray River.

6.

The Constructing Authority for the bridges and approaches shall be determined by the two Governments on the receipt of the report of the Engineers.

7.

The construction of both bridges and their approaches to be entered upon within one year after the ratification of this Agreement, and to be completed within three years of the date of such ratification.

8.

The cost of such bridges and approaches within the limits of the flood waters, whether for road or railway purposes, shall be borne in equal proportion by the Governments of Victoria and New South Wales.

9.

Should either of the said bridges be subsequently used for railway purposes, Victoria is to refund to New South Wales the difference between one-half and two-thirds the cost of these bridges and approaches.

10.

If either bridge is more than 1 mile from a Victorian railway, the Victorian Government is to extend its railway to within 1 mile of the bridge or bridges, provided that this does not involve the construction of a cockspur, or backshunt, line from any railway now existing within 5 miles.

11.

The Victorian Government shall have the right to construct a 5 ft. 3 in. gauge railway across any bridge constructed under this Agreement at or near Gol Gol, New South Wales, and to extend that railway into New South Wales for a distance not exceeding 20 miles. In designing any irrigation settlement area affected by this proposed railway, the New South Wales Government shall provide in the design or designs for the reservation of the land which will be required for railway purposes, including station sites, and other buildings, sidings, &c., such land to be determined upon in consultation with the Victorian Government.

12.

If a railway is constructed across either of the said bridges, the whole cost of the maintenance of any such bridge and approaches within the limits of the flood waters is to be borne by the Government of Victoria, provided that, should the road approach in any instance branch off from the embankment carrying the railway, the cost of maintenance of that portion of such road approach away from the joint embankment, and within the limits of the flood area, shall be borne equally by the Governments of Victoria and New South Wales. If the railway is not constructed across either bridge the maintenance of any such bridge used for highway traffic only to be borne in equal proportion between the Governments of Victoria and New South Wales.

13.

The said Engineers to also suggest the site of a bridge to cross the Murray River at a point between 4 miles upstream from Euston and 4 miles downstream from that township.

14.

These Engineers to submit the design of this bridge and approaches within the limits of the flood area, and suggest the materials of which it is to be constructed.

15.

Should the Engineers disagree upon the matters referred to, the questions in dispute shall be referred to arbitration in accordance with clause 50 hereof.

16.

The location and design of this bridge and approaches shall be approved by the Governments of New South Wales and Victoria.

17.

The bridge to be so constructed that it will provide for road traffic, and also railway traffic for both the 4 ft. 8½ in. and 5 ft. 3 in. gauges, and not offer any impediment to the navigation of the Murray River.

18.

The Constructing Authority for the bridge and approaches shall be determined by the two Governments on receipt of the report of the Engineers.

19.

The construction of the bridge and approaches shall be entered upon within one year after the

ratification of this Agreement, and to be completed within three years of the date of such ratification.

20.

The cost of the bridge and approaches within the limits of the flood waters, whether for road or railway purposes, to be borne in the proportions of one-third by the Government of New South Wales and two-thirds by the Government of Victoria.

21.

The Victorian railway shall be extended from Annuello to within 2 miles of the said bridge, and any such railway is to be completed and opened for traffic on or before the completion of the bridge.

22.

The whole cost of the maintenance of the bridge and approaches, where the latter are used for both road and railway purposes, to be borne by the Government of Victoria. Should the road approach branch off from the embankment carrying the railway, the cost of maintenance of that portion of such road approach away from the joint embankment, and within the limits of the flood area, shall be borne equally by the Governments of New South Wales and Victoria.

23.

The said Engineers to also suggest the site of a bridge to be constructed at Gonn Crossing, or at a point within 2 miles on either side of that Crossing.

24.

The Engineers to submit the design of this bridge and approaches within the limits of the flood area, and suggest the materials of which it is to be constructed.

25.

Should the Engineers disagree upon the matters referred to, the questions in dispute shall be referred to arbitration in accordance with clause 50 hereof.

26.

The location and design of this bridge and approaches to be approved by the Governments of New South Wales and Victoria.

27.

The bridge to be so constructed that it will provide for road traffic, and also railway traffic for both the 4 ft. 8½ in. and 5 ft. 3 in. gauges, and not offer any impediment to the navigation of the Murray River.

28.

The Constructing Authority for the bridge and approaches to be determined by the two Governments on receipt of the report of the Engineers.

29.

The construction of the bridge and approaches shall be entered upon within one year of the ratification of the Agreement, and to be completed within three years from the date of such

ratification.

30.

The cost of the bridge and approaches within the limits of the flood waters, whether for road or railway purposes, shall be borne in the proportion of one-third by the Government of New South Wales and two-thirds by the Government of Victoria.

31.

The Victorian Government shall extend its railway from Kerang to within 1½ miles of this bridge, and such railway is to be completed and opened for traffic on or before the completion of the bridge.

32.

The whole cost of the maintenance of the bridge and approaches, where the latter are used for both road and railway purposes, shall be borne by the Government of Victoria. Should the road approach branch off from the embankment carrying the railway, the cost of maintenance of that portion of such road approach away from the joint embankment, and within the limits of the flood area, shall be borne equally by the Governments of New South Wales and Victoria.

33.

The New South Wales Government undertakes to have legislation passed authorising the Victorian Government to construct a railway on the 5 ft. 3 in. gauge from the north side of the bridge at Gonn Crossing to a point at or near Stony Crossing, on the Wakool River, subject to such modifications and deviations in the route as may be determined by the Constructing Authority. The construction of the railway to be entered upon within two years of the date of ratification of the Agreement, and the construction to be completed to the terminus of the line within five years of the date of such ratification.

34.

The New South Wales Government shall also secure authority for the Victorian Government to construct a railway on the 5 ft. 3 in. gauge either from a point on the north side of the bridge crossing the Murray River at Moama, or from a point on the Deniliquin—Moama Railway Company's line, between Moama and a point 1 mile north of the Mathoura railway station, over which the Victorian Railways may have come to an agreement with the Company regarding railway running rights or leasing (or, alternatively, the Victorian Railways having secured by purchase through the New South Wales Government the said Deniliquin and Moama Railway), bearing westerly or north-westerly to Moulamein, or a point near Moulamein, thence continuing in a north-westerly direction to a point within 1½ miles of the south side of the Murrumbidgee River, near Balranald township, subject to such modifications and deviations in the route as may be determined by the Constructing Authority. The Constructing Authority to be the Victorian Board of Land and Works, and that Constructing Authority to be vested with all the powers of the Railway Construction Authorities in New South Wales.

The construction of the railway to be entered upon within twelve months of the ratification of the Agreement, and to be completed within three years of such ratification.

35.

The Enabling Act to authorise the Victorian Government to construct a railway on the 5 ft. 3 in.

gauge from the north side of the bridge across the Murray River near Euston to a point 30 miles north-easterly thereof so as to best serve, en route, the Benanee Settlement Area. The route of the said railway shall be determined within one year from the date of the ratification of this Agreement, and the construction of the said railway into New South Wales shall be entered upon simultaneously with the completion of the said bridge, provided that the New South Wales Government has at that date already made available for settlement at least 50,000 acres and the whole length of 30 miles of railway is to be completed within two years from date of completion of the bridge, it being a condition that the Government of New South Wales shall make a further 150,000 acres available for settlement at the rate of 50,000 acres every eight months up to the total area of 200,000 acres—such total area to be within 14 miles of the railway.

36.

The Enabling Act to provide that should any of the railways referred to in this Agreement be in possession of the Government of Victoria at the time the conversion of the Victorian Railways to the standard gauge decided upon by the Commonwealth and the States is entered upon, the Government of Victoria is to pay the New South Wales and Victorian proportions under that conversion scheme of the cost of the conversion of such lines to the standard gauge.

37.

The Enabling Act to provide that in the construction within New South Wales of any railway authorised thereunder, the works are to be constructed suitably for conversion to the adopted uniform gauge.

38.

It shall be lawful for the Secretary for Public Works on behalf of the New South Wales Government at any time by notice in writing to require the Victorian Government to sell, and thereupon the said Victorian Government shall sell to the New South Wales Government, any railway or railways constructed in New South Wales by the State of Victoria under this agreement:

- (a) upon the terms of paying the then value exclusive of any allowance for past or future profits of the said railway, or any compensation for compulsory sale or other consideration whatsoever of the said railway or railways, and of all lands, buildings, works, materials, and plant of the said Victorian Government suitable to and used by it for the purpose of the said railway or railways, such value in case of difference to be ascertained by arbitration in the manner provided by the New South Wales Public Works Act No. 45 of 1912 for settling cases of disputed compensation, and subject to the terms and conditions therein contained; and when any such sale shall have been made to the said New South Wales Government the said railway or railways, lands, buildings, works, materials, plant and premises shall vest in the New South Wales Commissioners for Railways, who shall have all the rights, powers, and authorities of the said Victorian Government in respect of the said railway or railways so sold.
- (b) Provided that if the right to purchase be exercised within fifteen years from the date of the opening of any such railway the Victorian Government shall be paid the capital outlay on construction and improvement of any such railway, exclusive of rolling stock, and also the full amount of any annual deficit arising from the operation of any such railway, but any surplus in any year shall be deducted from the total of such deficit or deficits. Should the total of the surpluses at the time of purchase exceed the total of the deficits, such excess shall be deducted from the capital resumption amount.

39.

The Victorian Railways Commissioners shall operate these railways so long as they are in the possession of the Victorian Government; the fares and rates for the carriage of passengers, goods, and live stock between any stations on any of these railways and any station on any railway in Victoria shall not be less than the rates charged for similar mileage on the Victorian Railways, but this is not to prevent the Victorian Government or Railways Commissioners regarding any of the railways constructed in New South Wales under this Agreement as being separate and detached from the Victorian railway system, and charging such fares and rates for the carriage of passengers, goods, and live stock over such detached railways as are charged for similar mileage on the Victorian Railways.

40.

The Enabling Act to provide that in the construction and working by the State of Victoria of the said railways the same conditions and rates of wages as then prevail in Victoria or are then being observed and paid by the Victorian Railway Department for similar work shall be applicable.

41.

The power to deviate the route of the Gonn Crossing to Stony Crossing railway or the route of the Balranald railway from its starting point between Moama and Mathoura is not to be used to alter the starting or terminal points of such railways as provided in this Agreement. The deviation between such points shall be limited to a distance not exceeding 5 miles on either side of the route of the said railways as marked on the plan marked "A", signed in duplicate by the Minister for Public Works, Railways, and State Industrial Enterprises, New South Wales, and the Minister for Railways and Mines, Victoria, and deposited in the offices of the said Ministers respectively; but this is not to prevent the starting point between Moama and Mathoura of the Balranald railway being fixed during the period between the signing of the said plan and the plan referred to in the next succeeding paragraph of the Agreement. Such plans shall be signed by the representatives of both Governments, and a signed copy of such plan shall be furnished to the Governments of New South Wales and Victoria respectively.

42.

The Constructing Authority shall within one year of the Agreement being ratified exercise its power to deviate the route of either of the said railways mentioned in the next preceding paragraph, and when it has fixed on the route or routes of either or both of the said railways, it shall forward to the Government of New South Wales a plan or plans signed and sealed by the Victorian Board of Land and Works showing the permanent route or routes of such railway or railways, and no further deviation beyond 40 chains on either side of such route or routes is to be made when constructing the railway or railways.

43.

Within one year from the receipt of such plans or plan showing the permanent route or routes of such railway or railways the Government of New South Wales shall resume, acquire, or otherwise make available for closer settlement an area or areas aggregating at least 125,000 acres in the district served or to be served by the proposed Balranald railway, and an area or areas aggregating at least 75,000 acres in the district served or to be served by the Gonn Crossing to Stony Crossing railway, and at least 80 per centum of such area or areas shall be within 10 miles of the proposed railway in those respective districts. The subdivision of such areas shall be entered upon

simultaneously with the entering upon of the construction of the railway to serve the district within which such resumed areas are situated.

44.

The Enabling Act shall provide that in each case of railway extension included herein the Government of New South Wales shall resume, acquire, or otherwise make available to and vest in the Victorian Government or Victorian Railways Commissioners, free of cost to Victoria, all lands required for railway purposes, including sites for stations and other buildings, sidings, &c.

45.

Should it become necessary to use heavier rolling stock to economically deal with the increasing railway traffic on the existing combined road and railway bridge over the Murray River between Echuca and Moama to strengthen that bridge, such work is to be regarded as part of the capital expenditure of the Balranald railway, and is to be carried out at the cost of the Government of Victoria, and should it become necessary to erect a bridge to be used exclusively for railway purposes adjacent to the existing bridge, such work is to be regarded as part of the capital cost of the Balranald railway and is to be carried out at the cost of the Government of Victoria.

46.

Should the work of constructing any of the bridges, approaches, or railways stated in this Agreement be interrupted by floods, accident, or international or industrial troubles directly affecting the supply of labour or materials for that work, the period of such interruption is not to be included in the time stated in this Agreement for the completion of such work.

47.

The government of New South Wales shall exercise its legal right to enter into negotiations with the Deniliquin and Moama Railway Company for the purchase of the latter's right, title, and interest in the Deniliquin and Moama railway, subject to an inspection by officers appointed by the New South Wales and Victorian Governments to report on the condition of the railway, buildings, rolling stock, &c., with a view of the New South Wales Government acquiring the said railway, buildings, rolling stock, &c., and handing them over to and vesting them in the Victorian Government or Victorian Railways Commissioners at cost of acquisition or resumption, including land, to be held and worked under and subject to the same conditions, including resumption under subclause (a) of clause 38, as applicable to other railways under this Agreement. Provided that such acquisition or resumption shall not be finalised until the proposed terms thereof have been approved by the Victorian Government.

48.

The questions of connecting the Corowa and Wahgunyah railways, and extending the Yarrawonga railway or the Wahgunyah railway to or towards Oaklands to develop that country, including its coal deposits, shall be inquired into by the Government of Victoria, and the Government of New South Wales will provide facilities for making such inquiries. The Government of Victoria shall arrange for these inquiries to be made by the Victorian Parliamentary Standing Committee on Railways at early convenience. Should the said Committee recommend the construction of either or any such railway between the said coalfields and the Victorian railway system, or any other connection provided for in this clause, the Victorian Government shall have the right to construct such railway or railways on the same terms and conditions, and shall work such railway or railways under the same conditions

as are applicable to other railways to be constructed under this Agreement. Any bridge or bridges built in connection with the said railway or railways shall form part of the capital cost of the said railway or railways, and shall be constructed at the cost of the Victorian Government.

49.

The Government of New South Wales undertakes to vest in the Government of Victoria any authority necessary to sanction the working of any railway or railways under this Agreement in New South Wales territory, including collection and enforcement of fares and freights, and the vesting of the control and management of the lines in the State of Victoria.

50.

Subject to clause 38 hereof, should any dispute or difference arise between the Engineers referred to in clauses 1, 2, 13, 14, 23, and 24 of this Agreement, as to any matter or thing referred to therein, or should there be any dispute or difference between the Governments of the States of New South Wales and Victoria as to any matter or thing arising out of this Agreement or as to the true meaning or construction of any part thereof, such dispute or difference shall be referred to arbitration in accordance with the New South Wales *Arbitration Act 1902*, or any amendment thereof.

51.

This Agreement is subject to ratification by the Parliaments of New South Wales and Victoria during the year of our Lord one thousand nine hundred and twenty-two.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written.

Signed, sealed, and delivered by the abovenamed GEORGE
WARBURTON FULLER, in the presence of—
R.T. BALL.



GEORGE W. FULLER.

And by the said HARRY SUTHERLAND WIGHTMAN LAWSON,
in the presence of—
SAMUEL BARNES

H.S.W. LAWSON.

Schedule 2 Agreement

AGREEMENT made the 6th day of July One Thousand Nine Hundred and Eighty-three between the Honourable Laurie John Ferguson Acting Premier of the State of New South Wales, for and on behalf of that State of the one part and the Honourable John Cain Premier of the State of Victoria, for and on behalf of that State of the other part WHEREAS by an Agreement made the 14th day of September 1922 between the then Premier of the State of New South Wales, for and on behalf of that State, and the then Premier of the State of Victoria, for and on behalf of that State, which agreement was set out in a Schedule to the Border Railways Act No. 16 of 1922 of the State of New South Wales and to the Border Railways Act No. 3194 of 1922 of the State of Victoria and is hereinafter referred to as the "Border Railways Agreement", it was agreed inter alia that the Government of the State of Victoria be authorised to construct certain railways AND WHEREAS the Euston to Lette Railway was partly constructed only and the land required in New South Wales for or incidental to the Railway was not vested in the Government of the State of Victoria or in any corporation on behalf of the said

Government in accordance with the provisions of the said Act No. 16 as amended and operations on the part of the Railway constructed have ceased and the trackwork has been dismantled AND WHEREAS the Gonn Crossing to Stony Crossing Railway was constructed but the land required in New South Wales for or incidental to the Railway was not vested as aforesaid in accordance with the provisions of the said Act No. 16 as amended and operations on the Railway have ceased and the trackwork has been dismantled AND WHEREAS the Kerang to Gonn Crossing Railway was constructed but operations thereon have ceased and the trackwork has been dismantled NOW it is agreed as follows:

1.

The Border Railways Agreement shall be and the same is hereby amended by deleting clauses 31, 33, 35, 41, 42 and 43.

2.

This Agreement is subject to ratification by the Parliaments of New South Wales and Victoria during the year of Our Lord One Thousand Nine Hundred and Eighty-three.

IN WITNESS whereof the said LAURIE JOHN FERGUSON and the said JOHN CAIN have hereunto set their hands and seals the day and year first above written.

SIGNED SEALED and DELIVERED by the abovenamed
LAURIE JOHN FERGUSON in the presence of:

JOHN BYRNE

AND by the said JOHN CAIN in the presence of:

RORY SHERIDAN

} L.J. FERGUSON
}
}
} JOHN CAIN