

(Rough Draft for Consideration Only.)

No. , 1912.

A BILL

To ratify and provide for carrying out agreements entered into between the Premiers of New South Wales, Victoria, and South Australia, respecting Lake Victoria and the Murray River; to amend certain Acts; and for purposes consequent thereon or incidental thereto.

WHEREAS the Premiers of the States of New South Wales, Victoria, and South Australia have entered into the agreement set out in Schedule One hereto, subject to ratification by the Parliaments of the said States: And whereas the said Premiers have further agreed to extend the said agreement by including in the works described in the First Schedule thereto any other weirs and locks associated with or incidental to the storage works at Lake Victoria in and across the Murray River between the eastern boundary of South Australia and the town of Wentworth, in New South Wales: And whereas it is desirable to ratify and to provide for carrying out the said agreement as so extended: Be it therefore enacted by the King's

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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:—

Preliminary.

1. This Act may be cited as the "Lake Victoria Agreement" Short title.
Act, 1912."

2. This Act shall bind the Crown.

3. (1) This Act shall commence and come into force on a day to be fixed by proclamation of the Governor published in the Gazette.

(2) The Governor may not make such proclamation unless he is satisfied that the Parliaments of Victoria and South Australia have respectively passed Acts ratifying the agreement.

4. In this Act, unless the context indicates another meaning,—
"Land" includes Crown land, and buildings, messuages, tenements and hereditaments of any tenure, and any easement, right or privilege in, over, or affecting any land.

"Maintenance" includes repair and improvement.

"River" includes any affluent, effluent, creek, ana-branch, or extension of a river.

"South Australia" means the State of South Australia.

"The agreement" means the agreement set out in Schedule One to this Act as extended in the manner hereinbefore recited.

"The Lake Victoria Works" means the works mentioned and described in the First Schedule to the agreement as extended in the manner hereinbefore recited.

Ratification of the agreement.

5. The agreement set out in Schedule One to this Act as extended in the manner hereinbefore recited is ratified, and shall take effect on the coming into force of this Act.

The acquiring of land by South Australia.

6. The lands mentioned in the Second Schedule to the agreement, and more particularly described in Schedule Two to this Act, are hereby vested in South Australia for an estate of fee-simple, and may, subject to the conditions expressed in the agreement in pursuance of such vesting, be granted or transferred to any person appointed in that behalf by the Government of the said State.

7. At the request of the Government of South Australia, the Governor may, at the expense of the said Government, resume or appropriate land for the purpose of the construction, maintenance, use, and

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and enjoyment by South Australia of the Lake Victoria works, and transfer such land to and vest the same in such person as may be appointed in that behalf by the Government of the said State.

Such resumption and appropriation shall be under the Public Works Act, 1900, and any Act amending it, and the said Acts, except section twenty-eight of the above mentioned Act, shall apply thereto. For that purpose any such work shall be an authorised work.

8. The powers conferred by the last preceding section may be exercised with respect to any lands flooded or likely to be flooded through the construction or use of works in South Australia constructed under the Act of Parliament of South Australia intituled "The Murray Works Act, 1910."

9. The Government of South Australia, or any person acting on its behalf may, for any of the purposes mentioned in the two last preceding sections, agree with the owners of any lands, and with all parties having any estate or interest in such lands, or by the Public Works Act, 1900, or any Act amending it, enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands or such parts thereof, as are thought proper, and of all estates and interests in such lands of what kind soever.

For the purpose of any such purchase, the provisions of the said Acts relating to the purchase of land, or any interest in the same, by the constructing authority shall apply.

Construction of works.

10. The Government of South Australia may for the purpose of the construction, maintenance, use, and enjoyment by South Australia of the Lake Victoria Works, in pursuance of the agreement, dam, set back, divert, drain impound, store, or release, or otherwise control the waters of, and embank, narrow, widen, or deepen, cleanse, clear, scour, dredge, open, straighten, and remove obstructions from the Murray River or its banks between its junction with the Darling River and the eastern boundary of South Australia.

11. The Government of South Australia shall, in relation to the construction of the Lake Victoria works, have the like powers and duties as are conferred and imposed on a Constructing Authority by Division Five of Part VI of the Public Works Act, 1900, in relation to any authorised work ; and the provisions of the said Division shall, mutatis mutandis, apply in relation to the construction of such works.

12. Nothing in the Water Rights Act, 1902, shall affect the exercise of any powers conferred by the agreement or by this Act on South Australia, and the first mentioned Act shall be read subject to the agreement.

Injury

Injury caused by works.

13. No action shall be brought for compensation for injury suffered by the construction or maintenance by South Australia of the Lake Victoria works unless—

- (a) notice in writing stating the nature of the injury has been sent by post to the Government of the said State, addressed under cover to the Crown Solicitor of New South Wales, within *six* months after such alleged injury has been suffered ; and
- (b) the person claiming compensation brings the action without unreasonable delay.

14. In determining whether any and what compensation is to be made for any injury suffered by the construction or maintenance of Lake Victoria works, the court shall in each case have regard to and is hereby empowered and directed to apply the following principles :—

No compensation shall be made for any injury caused by the taking or diverting of any water in pursuance of the agreement unless such taking or diverting is such as to deprive the plaintiff of the enjoyment of a right to which he was previously entitled.

The measure of damages shall be the direct pecuniary injury to the plaintiff by the loss of something of substantial benefit accrued or accruing, and shall not include remote, indirect, or speculative damages.

Where the injury complained of appears to be of a permanent or continuing character, or likely to be repeated, a sum may be awarded which the court may declare to be a compensation for the injury sustained in respect of the matter complained of to the date of the bringing of the action, and also for all future injury in respect of the same matter. Where such sum is so awarded no further compensation may be recovered in respect of any such future injury.

15. If an action is brought to recover compensation for any such injury alleged to be the result of the execution of works which at the time of the commencement of the action are incomplete, it shall be lawful for any judge of the court before which proceedings in the action have been taken, upon application by the defendant, made by summons or by motion upon notice to the plaintiff, to make an order directing that the proceedings in the action shall be stayed until the completion of such works or for such period to be stated in the order as the judge may consider sufficient for the completion of such works, upon such terms as the judge thinks fit to impose, and such action shall be stayed accordingly ; but at the expiration of the stay limited in such order the plaintiff shall be at liberty to proceed with the action.

16.

16. Where an action is brought to recover compensation in respect of any acts done in pursuance of the agreement, and which cause or are likely to cause injury to property, and such acts may cause injury of the same or a similar kind in respect of estates or interests in reversion as well as in possession in such property, the plaintiff shall, at the request of the court, satisfy it as to the nature and extent of his estate or interest, and of the respective estates or interests of all other persons (if any) in such property, and that he has given sufficient notice to all such other persons of his proceedings in the action. All such other persons, whether they have received such notice or not, who may appear before the court shall be entitled to be heard on behalf of their respective interests in the compensation to be awarded.

Where in such action compensation is awarded for such injury, the court may award and apportion as between the plaintiff and such other persons as to such court may seem fit the amounts to be received out of such compensation by any or some or all of them for all injury of the same kind caused or likely to result in respect of their respective estates and interests in such property. Such amounts shall be received in full discharge and satisfaction of their claims to compensation in respect of the matter complained of, and of all future injury in respect of the same matter.

Any person to whom any such sum has been awarded or apportioned as aforesaid shall have all such remedies and means of recovering the said sum from the defendant, as though such person had originally been a plaintiff in the action.

Miscellaneous provisions.

17. No rates, taxes, or charges whatsoever shall be imposed, made, or levied, in respect of the Lake Victoria works, or in respect of any land or other property vested in South Australia, or in any person on behalf of that State under this Act.

18. Whosoever unlawfully and maliciously destroys or damages, or attempts to destroy or damage, any works or portion of works constructed in pursuance of the agreement shall be liable on conviction to imprisonment with hard labour for any term not exceeding ten years.

19. (1) The Governor may, subject to the agreement, make regulations,—

- (a) regulating the supply and use of such of the waters of Lake Victoria as are provided by South Australia under the first proviso to clause four of the agreement;
- (b) regulating the use of watering places for stock on Lake Victoria in pursuance of the said clause; and
- (c) providing for the inspection, in pursuance of the agreement, of the Lake Victoria works.

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(2) The Governor may also make regulations regulating the working and the use of locks constructed in pursuance of the agreement: Provided that such regulations must be first approved by the Governor-in-Council of each of the States of Victoria and South Australia.

(3) In any regulations under this section the Governor may impose any penalty not exceeding *fifty* pounds for any breach thereof.

(4) Such regulations shall be published in the Gazette and laid before both Houses of Parliament without delay.

20. All penalties for offences against or breaches of any regulations made under this Act may be recovered in a summary way before a stipendiary or police magistrate or any two justices of the peace in petty sessions.

AGREEMENT made the fifth day of January, one thousand nine hundred and twelve, between the Honorable James Sinclair McGowen, Premier of New South Wales, for and on behalf of that State of the first part; the Honorable John Murray, Premier of Victoria, for and on behalf of that State of the second part; and the Honorable John Verran, Premier (and Commissioner of Public Works) of South Australia, for and on behalf of that State of the third part: Whereas the State of South Australia, by the Murray Works Act, 1910, authorized and empowered the Commissioner of Public Works of that State to construct and maintain in or across the Murray River (within that State), and in or through the lands riparian thereto, works for damming, impounding, storing, conserving, or regulating, or otherwise utilising or controlling the waters of the said river for the purpose of navigation, irrigation, watering stock, domestic and general supply; and in addition to such works within the State of South Australia, and for similar purposes, on an agreement as herein expressed being entered into, to construct and maintain, with such variations, modifications, and extensions as the said Commissioner may think desirable, the storage works at Lake Victoria, in the State of New South Wales, and the works (being two weirs and locks associated with or incidental to the said storage works) in, on, or across the Murray River and lands riparian thereto in the said States of New South Wales and Victoria, which storage works, weirs, and locks (with regulators and other incidental works on the Murray River or the Darling River), are together referred to as the Lake Victoria Works, and are mentioned and described in the First Schedule hereto: And whereas, at a conference between the Premiers of the said States held at Melbourne on the twenty-third day of January, one thousand nine hundred and eleven, a resolution was agreed to having for its object the construction and maintenance and the use and enjoyment (subject as herein mentioned) by the State of South Australia of the said Lake Victoria Works mentioned and described in the First Schedule hereto: And whereas it is considered that to carry such resolution into effect would conduce towards the maintenance and improvement of the flow of the Murray River and be beneficial to the said States: And whereas, in order to carry the said resolution into effect, it is deemed desirable that the said parties shall enter into this Agreement.

Now it is hereby agreed as follows:—

1. This Agreement is subject to ratification by the Parliaments of the States of New South Wales, Victoria, and South Australia, and shall come into effect when so ratified.

2. The States of New South Wales and Victoria, so far as they can do so and Construction to be may be necessary in pursuance of this Agreement, will authorise and facilitate the facilitated. construction and maintenance and the use and enjoyment by the State of South Australia of the Lake Victoria Works mentioned and described in the First Schedule hereto.

3. To the end and for the purpose mentioned in clause two—

- (i) The State of New South Wales will transfer to and vest in the said State of Transfer of site. South Australia, for an estate in fee-simple, subject to the conditions hereinafter expressed, the lands mentioned and described in the Second Schedule hereto.
- (ii) The States of New South Wales and Victoria respectively will, at the request Resumption of and expense of the State of South Australia, acquire or resume private lands lands. or appropriate Crown lands and arrange for payment of compensation to any owner or occupier of any land injured or prejudicially affected by reason of the construction of the Lake Victoria Works, and will transfer to and vest in the State of South Australia the lands so acquired, resumed, or appropriated.
- (iii) The States of New South Wales and Victoria respectively will authorize and Powers to be enable the State of South Australia— conferred.
 - (a) To compulsorily or otherwise purchase, take, acquire, or lease, or enter, occupy, or use land in the said States of New South Wales and Victoria respectively.
 - (b) To dam, set back, divert, drain, impound, store, or release, or otherwise control the waters of or embank, narrow, widen, or deepen, cleanse, clear, scour, dredge, open, straighten, and remove obstructions from the Murray River or its banks between its junction with the Darling River and the eastern boundary of the State of South Australia.
 - (c) To exercise such rights, licenses, permissions, easements, privileges, powers, and immunities in the said respective States, or (subject to clause 10) in respect of the use, flow, and control of the waters of the Murray River as may be necessary.

The authorities and powers conferred by this clause shall be exercised in accordance with (so far as applicable) the laws for the time being of the said States respectively for the acquisition of land for public purposes or such other laws as may be found necessary for the purpose.

4. After the commencement of the Lake Victoria Works, the State of South Power to South Australia may at all times divert into the storage reservoir at Lake Victoria, for Australia to store impounding or storing therein, the waters of the Murray River flowing at the site or water in Lake sites of the offtake or offtakes for diversion into Lake Victoria. Victoria.

Subject to any right at the date of this Agreement lawfully exercisable by an occupier of land on the bank of the said lake to use the water being in the said lake for domestic purposes, or for watering cattle or other stock, or for gardens not exceeding five acres in extent used in connection with a dwelling-house, and to the general right of all persons to use such water for domestic purposes or for watering cattle or other stock at places on such lake to which at the date of this Agreement there is access by public road or reserve, the water impounded or stored in the reservoir at Lake Victoria shall cease to be deemed part of the natural volume of the Murray River, and shall, as against all persons whatsoever, including the Crown, be the absolute property of the State of South Australia, to be devoted to such uses as may be determined by such State, which may at the times and in the quantities it thinks fit release such water for conveyance by the channel of the Murray River to the eastern boundary of the State of South Australia, or otherwise for the purposes of the said Murray Works Act, 1910: Provided that the State of South Australia, subject to this Agreement, will at the request of the State of New South Wales make provision where necessary for and permit the reasonable use of the waters of the said lake by occupiers on the settlement of lands of a total area not exceeding 200,000 acres in the vicinity of Lake Victoria for domestic purposes and for watering their cattle and other stock: Provided also, that if access to the watering-places aforesaid by public road or reserve be interfered with by the construction of the said Lake Victoria Works, the State of South Australia will, on the request of the State of New South Wales, provide such other watering-places in lieu thereof as shall not interfere with the said works.

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5. Each of them, the States of New South Wales and Victoria respectively, so far as it can and may be necessary, will provide for and secure the execution and enforcement within its territory of the provisions of this Agreement and the Act ratifying the same.

States of New South Wales and Victoria to provide for enforcement of Agreement.

6. Any weir constructed under this Agreement shall be provided with a suitable lock (to be worked by the State of South Australia) for the navigation at all reasonable times of the Murray River and its tributaries, and, unless the plans are approved of by the States of New South Wales and Victoria, shall be such as will not so materially and injuriously raise and affect the maximum flood levels of and block the flow in the main channel of the Murray River as to divert the main volume of the said river from its true into a new course.

Works not to obstruct navigation, and not to alter course of river.

7. The State of South Australia will forward to the States of New South Wales and Victoria copies of any general scheme for carrying out works under this Agreement and at least one month before the commencement of construction copies of the plans showing and defining any such works.

Plans to be forwarded to New South Wales and Victoria.

8. The State of South Australia, at all reasonable times, will facilitate inspection by the States of New South Wales and Victoria of weirs and locks constructed under this Agreement, and by each of the said States of such parts of the works as are constructed within its territory.

Inspection of work by States.

9. The works constructed by and the property vested in the State of South Australia under this Agreement shall not be subject to general, special, or local taxation.

Exemption from taxation.

10. Nothing in this Agreement is intended or shall be deemed or so construed as to abridge, extend, or prejudice the right of each State party hereto or the residents therein to the reasonable use of or prejudice the public right of navigation in the waters of the Murray River and its tributaries, or shall be deemed or construed as an admission, settlement, or compromise of the claims of such States *inter se* in respect of such waters.

Agreement not to affect rights or claims.

11. The States of New South Wales and Victoria will authorize the State of South Australia to exercise in the said States respectively, so far as may be necessary for the purposes of the construction of works in South Australia under the South Australian Murray Works Act, 1910, and the maintenance, use, and enjoyment of the said works, the powers and authorities (so far as applicable) mentioned in clause 3 of this Agreement.

Powers incidental to works in South Australia.

- 12. In this agreement, save where inconsistent with the context,—
“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;
“Maintenance” includes repair and improvement;
“River” includes any affluent, effluent, creek, and branch, or extension of such river.

Interpretation.

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

Signed, sealed, and delivered by the above-named James Sinclair McGowen in the presence of— JAS. S. MCGOWEN.

W. A. HOLMAN,

Signed, sealed, and delivered by the abovenamed John Murray in the presence of— J. MURRAY.

F. SHORT, J.P., Secretary to Premier, Melbourne,

Signed, sealed, and delivered by the abovenamed John Verran in the presence of— JOHN VERRAN.

JAMES W. JONES.

SCHEDULES.

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SCHEDULES.

FIRST SCHEDULE.

A REGULATION reservoir with a storage capacity of about 22½ thousand millions of cubic feet at and about Lake Victoria, in the State of New South Wales, situate within 3 miles of the Murray River and about 36 miles in a direct line below the junction of the Murray River with the Darling River, and about 14 miles in a direct line above the eastern boundary of the State of South Australia, which lake covers an area of approximately 30,000 acres, and is connected with the main stream of the Murray River by the Rufus River and Frenchman's Creek.

A weir and lock in and across the Murray River about or in the neighbourhood of the junction of that main river with Frenchman's Creek.

A weir and lock in and across the Murray River about or in the neighbourhood of the junction of the Rufus River with the main river.

Regulators on or at the Lindsay River and other anabranches or creeks of the Murray River.

SECOND SCHEDULE.

That piece of land situated in the State of New South Wales, and covered with water, now known as Lake Victoria, with the two water-courses known as Rufus River and Frenchman's Creek connecting the River Murray with the said lake for and throughout their entire course from the said river to the said lake; also so much of the banks and foreshores of the said lake and watercourses and of the land adjoining thereto, as shall be sufficient for all purposes of access to and use and enjoyment of the said Lake Victoria Works.

JAS. S. MCGOWEN.
J. MURRAY.
JOHN VERNON.

THIRD SCHEDULE.

(Land vested in South Australia).
